

**L'EXÉCUTION DES DÉCISIONS FONDÉES SUR LA CONVENTION
DE LA HAYE DE 1980**

- UNE ÉTUDE JURIDIQUE COMPARATIVE -

établi par Andrea Schulz, Premier secrétaire

(Version provisoire)

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ENFORCEMENT OF ORDERS MADE UNDER THE 1980 CONVENTION

- A COMPARATIVE LEGAL STUDY -

drawn up by Andrea Schulz, First Secretary

(Provisional version)

*Document préliminaire No 6 d'octobre 2006
à l'intention de la Cinquième réunion de la Commission spéciale
sur le fonctionnement de la Convention de La Haye du 25 octobre 1980
sur les aspects civils de l'enlèvement international d'enfants
(La Haye, 30 octobre – 9 novembre 2006)*

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for the attention of the Fifth meeting of the Special Commission
to review the operation of the Hague Convention of 25 October 1980
on the Civil Aspects of International Child Abduction
(The Hague, 30 October – 9 November 2006)*

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Introduction

1. 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 recommendation was adopted:

"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."

2. As a first step, the Permanent Bureau has undertaken comparative research on the internal law and practice with regard to enforcement in the States Parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* which is the subject matter of this report.

3. At the same time, at the request of the Permanent Bureau and supported by the International Centre for Missing and Exploited Children, Professor Nigel Lowe of Cardiff University has undertaken empirical research on the practice of enforcement of Hague Convention orders (including access orders) in a number of Contracting States. The research also focused on identifying existing problems as well as areas of good practice in the context of enforcement. Professor Lowe and the Cardiff team have prepared a report on the empirical research.

4. The Permanent Bureau has carried out its research by way of a questionnaire which addressed the following aspects:

- I. Legal bases for the enforcement of Hague return orders and contact orders
- II. Enforceability and legal remedies
- III. Enforcement procedure
 - A. The order to be enforced and the aims of enforcement
 - B. Actors involved in enforcement
 - C. The enforcement procedure proper
 - D. Costs
- IV. Statistical information
- V. Co-operation
- VI. Training and education for professionals
- VII. Other information
- VIII. Orders granting rights of contact / access / visitation

5. 45 jurisdictions have responded to the questionnaire: Argentina, Austria, Bahamas, Belarus, Bulgaria, Canada (Federal Central Authority, Alberta, Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong SAR, Macao SAR), Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, the Netherlands, New Zealand, Norway, Panama, Romania, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland, Scotland) and the United States of America. Their responses are summarised in this report. They show that there are great differences in the law and practice concerning the enforcement of return orders in Contracting States. While the types of coercive measures that exist appear largely the same in all legal systems, ranging from pecuniary fines imposed on, and imprisonment of, the abducting parent, to the exercise of physical force against the abducting parent and / or the sometimes also the child, the conditions and procedures for their application and their use in practice vary widely. The same is true for measures that might be ordered while return proceedings are pending with a view to preventing the abducting parent from taking the child into hiding.

6. As far as possible legal remedies against a return order or against certain enforcement measures are concerned, we find jurisdictions where no legal challenge is

possible, and others where there are up to five different types of challenge which may sometimes be lodged simultaneously, sometimes consecutively. Similarly, the question at what time a return order may be implemented by coercive enforcement measures if the abducting parent does not comply voluntarily is answered very differently from State to State. Sometimes the order has to be final and no longer subject to ordinary appeal before it can be enforced; sometimes it is immediately enforceable. Orders granting provisional enforceability as well as a stay of enforceability are widely known in different variations, and there are different views and practices concerning the desirability of enforcing a return order while an appeal against it is still pending.

7. The comparative research also shows that the range of persons actually present at the scene of enforcement varies widely, in particular as concerns the involvement of the social professions (child welfare workers etc.). While in some jurisdictions their presence normally facilitates the situation, in others it sometimes even seems to complicate matters. This may be related to the actual content of the order. Sometimes the court orders the surrender of the child to the applicant (in the State where return proceedings are pending), sometimes the abducting parent is ordered to return the child to the State of habitual residence, and in rare cases the courts might order the removal of the child from the abducting parent by an enforcement officer for the purposes of returning the child to the State of habitual residence. It is obvious that the content of the order may have an impact on its acceptance, by the abducting parent first and foremost, but also by the social professions invited to assist in the implementation of the return order. The research demonstrated how important it is in this respect that all professionals involved in return proceedings, including the enforcement of an order, are well-informed about the Convention and its objectives as well as of each other's respective roles in its implementation. Communication between them throughout the proceedings is of utmost importance. Working conferences and training sessions that bring together these different professionals, first and foremost at the internal level of each State but also at the international level, have proved extremely helpful in establishing a basis for the necessary mutual understanding, co-operation and communication.

8. Although both research projects addressed contact as well as return orders, most of the responses to the questionnaire issued by the Permanent Bureau focused on return. The responses concerning contact have been summarised in Part VIII of this report.

9. Jointly, the two research projects have identified certain structural problems as well as existing good practice with regard to the enforcement of Hague return orders. A number of respondents to the questionnaire issued by the Permanent Bureau underlined how much they would welcome a Guide to Good Practice on enforcement. Consequently, in a separate document, guiding principles will be proposed to the 2006 Special Commission which could form the basis for a Guide to Good Practice on the enforcement of return orders.

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.

10. In several jurisdictions, there exist no specific legal provisions concerning the enforcement of return orders under the 1980 Hague Convention.¹ In particular, the implementing legislation for the Hague Convention does not address this issue.²

11. A number of other respondents referred to their legislation adopted for the ratification of, or accession to, the 1980 Convention or for its implementation, without mentioning whether those provisions contain further details regarding enforcement.³

12. In several jurisdictions, however, the provisions implementing the 1980 Hague Convention, or other provisions, do contain specific rules regarding enforcement.⁴ These will now be described in some more detail.

13. In Austria, Article 5(4) of the Law of 9 June 1988 implementing the Convention enables the court to request the child welfare authority to assist in the enforcement of a return order. This assistance includes the temporary placement of a child in an institution after a physical taking away from the abductor, if necessary.

14. In the Czech Republic, some specific provisions are contained in Directive No 56/2004-MO-J issued by the Ministry of Justice on the practice of the Czech authorities of justice in relations to abroad in civil and commercial matters (Articles 45 and 46).

15. In Denmark, the enforcement of a return order is governed by Articles 10 and 11 of Act No 793 of 27 November 1990 on International Enforcement of Decisions concerning Custody of Children and Restoration of Custody of Children, etc. (International Child Abduction), whereby both the 1980 Hague Convention and the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (the European Custody Convention) have been implemented in Danish law. These Articles constitute both the substantive foundation for the court's decision on return and the foundation for enforcement. Articles 12-17 contain specific rules governing the enforcement of a Hague return order. *E.g.*, before the enforcement court gives a decision in proceedings concerning the enforcement of a Hague return order, it shall hear the child if the child has attained an age and a degree of maturity at which it is appropriate to take account of his or her views (Article 16).

¹ **Argentina, Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong, Macao), Cyprus, France, Georgia, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Slovakia, Turkey.**

² **Bahamas:** International Child Abduction Act, 1993 (enacted as part of the Statute Law to give effect to the Convention on the Civil Aspects of International Child Abduction and for matters connected therewith) and International Child Abduction Rules, 2001 (enacted as part of the subsidiary legislation to govern the procedures of the Supreme Court for dealing with applications for the return of the child under the Convention); **Canada (Alberta):** International Child Abduction Act, (**Quebec**): Act respecting the civil aspects of international and interprovincial child abduction, R.S.Q., c. A-23.01; **Lithuania:** The Convention was implemented by a ruling of 21 August 2002 adopted by the Government on appointment of the Ministry of Social Security and Labour as Central Authority; **Monaco:** Decree (*ordonnance*) No 10-767 of 7 January 1993 giving effect to the 1980 Convention as of 1 February 1993.

³ **Belarus:** Law of 13 November 1997 "About accession to the Convention on the Civil Aspects of International Child Abduction"; **Cyprus; United Kingdom (Montserrat):** Child Abduction and Custody Act 1997 (No 12 of 1997). It also implements the provisions of the 1980 *European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children*. In **Turkey**, which is a Contracting State since 1 August 2000, a draft law on implementation was before Parliament in April 2005.

⁴ **Austria, Czech Republic, Denmark, Finland, Germany (since 1 March 2005), Italy, Netherlands, New Zealand, Norway, Panama, Romania (since 29 December 2004), United Kingdom, United States of America.**

Moreover, during return proceedings the enforcement court may on application determine that during the proceedings the child shall be placed with either of the parents or in a neutral place at the initiative of the social authorities where this is found to be necessary. This order shall keep its effects until the final decision has been given in the proceedings (Article 17). Article 18 states that otherwise proceedings shall be subject to the provisions of Parts 45, 46 and 48 of the Danish Administration of Justice Act.

16. In Finland, return orders made under the 1980 Hague Convention are enforced under the Finnish Child Custody and Right of Access Act (Law No 1983/361, Chapter 7). In addition, the provisions of the Act on the Enforcement of Decisions on Child Custody and Right of Access (Law No 619/1996) are applied. An extract of the Child Custody and Right of Access Act is given as follows:

"Section 46 — Enforcement of a decision on the return of a child (186/1994)

(1) An order to return a child, issued under section 30, shall be enforced without hearing the opposing party, by ordering the child to be fetched. In other respects, the provisions of the Act on the Enforcement of Decisions on Child Custody and Right of Access apply to the enforcement of the order, in so far as not otherwise provided below in paragraph (2) or (3). (620/1996)

(2) If the order to return a child is based on an application that had been filed before one year had passed from the abduction of the child or the failure to return the child, the enforcement of the order to return the child may be declined only if the child objects to being returned and has attained such an age and level of maturity that it is appropriate to take his or her opinion into account. (620/1996)

(3) The order to return a child shall be enforced regardless of any decision on child custody or his being taken into the care of the social welfare board. However, no return shall be undertaken after the child has attained the age of sixteen years."

17. Germany amended its implementing legislation concerning the 1980 Convention as of 1 March 2005 and introduced some special rules governing the enforcement of Hague return orders in section 44 of the new law (*Internationales Familienrechtsverfahrensgesetz (IntFamRVG)* – Act on International Family Law Proceedings). Under German law, the return is ordered under a penalty of fine or imprisonment in the case of non-compliance. This penalty shall be included in the original order. If the return order is not complied with, the actual sanction then has to be ordered. In the past, both steps could be challenged separately, in addition to challenges against the return order on the merits. Now the penalty cannot be challenged separately any more, which speeds up the enforcement. However, the second step remains, namely that the fine or imprisonment has to be ordered, and this order can be challenged separately and will suspend the enforcement of the measure.

18. In Italy, the enforcement of Hague return orders is governed by Law No 64 of 15 January 1994 which is the law ratifying the Convention. It regulates all aspects of its implementation by indicating the competent judge (the local Juvenile Court (*Tribunale per i Minorenni*) identified by venue rules), the judicial organ in charge of the enforcement of return orders (the Public Prosecutor at the competent Juvenile Court) and the timeframe to be respected (the court has to fix a date for the hearing within 30 days starting from the day the application was received).

19. In the Netherlands, Article 813 of the Code of Civil Procedure, as amended by the Act implementing the 1980 European Custody Convention and the 1980 Hague Convention, applies to the enforcement of a return order. If the court orders the child's return, it shall order the child's surrender to the person who has custody rights over the child or, if the 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. Under Article 813, 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. 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).

20. In New Zealand, the Care of Children Act 2004,⁵ which entered into force in July 2005, contains specific legislative provisions to provide for the enforcement of return orders: Under section 119, where a New Zealand court makes a return order, the judge may issue a warrant for the child to be uplifted and delivered to a specified person or authority.⁶ In addition, under section 118, where there are reasonable grounds for believing that a person is about to take a child out of New Zealand with intent to, or in circumstances where the taking of the child out of New Zealand would be likely to, prevent compliance with a return order, a judge or court registrar may:

- issue a warrant for the child to be uplifted and placed in the care of a specified person;
- order the surrender of any tickets, travel documents or passports of the child or person believed to be about to take the child out of New Zealand; or
- order that the child not be removed from New Zealand.

21. The Care of Children Act extends the previously existing equivalent provision in the Guardianship Amendment Act 1991 (section 25) by enabling orders to be made if the likely effect (rather than the intent of a party) of taking a child out of New Zealand is to frustrate a return order. Similarly, the courts have been given a new express power to make an order not to remove the child from New Zealand. The Care of Children Act also makes it an offence to knowingly resist or obstruct any person executing a warrant such as those described above (section 79).

22. In Norway, the Convention was implemented by the Act relating to the recognition and enforcement of decisions regarding parental custody and the return of children of 8 July 1988 No 72 (the Child Abduction Act) which transforms the 1980 Hague Convention and the European Custody Convention. Section 18(1) states that enforcement shall take place according to the rules on the enforcement of decisions as contained in the Children Act. Section 42 of the Children Act refers to Chapter 13 of the Enforcement Act. This chapter regulates the enforcement of non-financial claims. Moreover, section 18(2) of the Child Abduction Act states that where it is not advisable for the child to stay with one of the parents while the case is pending, the court may order that the child protection authorities shall take over the care of the child until the case is decided. Where the court decides that the child may stay with one of the parents while the case is pending, limitations on the right of contact may be ordered.

23. In Panama, executive decree No 222 of 31 October 2001 established the legal framework for the implementation of the 1980 Hague Convention. According to Article 18 of this decree, the judicial authority has to adopt measures with the Central Authority to deliver the child without danger.

⁵ The Care of Children Act 2004, Guardianship Act 1968 and Guardianship Amendment Act 1991 can be viewed at < <http://www.legislation.govt.nz/> >. The Care of Children Act 2004 replaces the Guardianship Act 1968 and the Guardianship Amendment Act 1991.

⁶ Previously section 26 of the Guardianship Amendment Act 1991.

24. Romania acceded to the Convention by Law No 100/1992. There were no specific rules concerning the enforcement of Hague return orders. The general rules on enforcement of court decisions as contained in the Code of Civil Procedure turned out to be insufficient for this specific matter, which led to the adoption of special rules: In September 2004, Law No 369/2004 on the implementation of the 1980 Hague Convention was adopted. It also contains special rules on enforcement. It entered into force on 29 December 2004 and has recently been complemented by Regulations approved by order of the Minister of Justice which further define the role and operation of the Ministry of Justice in its capacity as Central Authority.⁷

25. In Sweden, Law (1989:14) on recognition and enforcement of foreign decisions concerning custody of children [...] and on the return of children implements both the 1980 Hague Convention and the European Custody Convention. The law also lays out the basis for the enforcement of return decisions. Details are discussed below under the relevant questions.

26. In the United Kingdom, the Child Abduction and Custody Act 1985 – an Act of the United Kingdom Parliament – contains specific provisions on the enforcement of return orders under the Convention. Section 5 provides that the court may, at any time before a return application is determined, give such interim directions as it thinks fit for the purpose of ensuring the child's welfare or preventing changes in circumstances pending a decision on return. Section 24A states that if in proceedings for the return of a child the court does not possess adequate information concerning the whereabouts of the child, the court may order any person it believes to have relevant information to disclose it. Wilful failure to do so could be punished as a contempt of court.

27. In the United States of America, federal implementing legislation for the Hague Abduction Convention, 4 U.S.C 11603 (g), requires any state or federal court in the United States to recognise as enforceable a Hague return order issued by any other state or federal court:

"Full faith and credit shall be accorded by the courts of the states and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter."

28. In addition, in 1997, the National Conference of Commissioners on Uniform State Laws developed the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), a model law for state courts. The UCCJEA includes significant new enforcement provisions that had not been included in an earlier model law on child custody jurisdiction. The UCCJEA includes provisions directing state courts to enforce Hague return orders made by the courts of other states. The UCCJEA has now been adopted (with some modifications) by 44 states, the District of Columbia and the U.S. Virgin Islands, and is pending in 4 other states.

29. The relevant UCCJEA provisions and a comment of the Commissioners read as follows:

"SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION. *Under this [article] a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.*

Comment

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601

⁷ Law No 369/2004, published in the Official Monitor No 888 of 29 September 2004, and Order No 509/C of 5 April 2005, published in the Official Monitor No 349 of 25 April 2005.

et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

SECTION 303. DUTY TO ENFORCE.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child-custody determination."

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.

30. Sometimes the general rules do not apply to Hague return cases because specific rules are in place.⁸ In other jurisdictions that have specific rules, the general rules would still be applicable for any issue not regulated in the specific rules. In civil law jurisdictions, this is often the Code of Civil Procedure,⁹ a general judicial code¹⁰ or a set

⁸ *E.g.* in Italy.

⁹ **Argentina;** Civil Code of Practice; **Bulgaria:** Law to amend and supplement the Code of Civil Procedure, published in State Journal No 84 of 2004. According to Article 423a of the Code of Civil Procedure, Chapter 45 of this Code governs the enforcement of an order concerning parents' rights and measures concerning contact between parents and children. This Chapter is also applied to decisions of the court relating to Part 7 "Proceedings concerning the return of a child or the exercise of contact". Under Article 422, where the defendant does not comply with the order, the receiver, and since 1 September 2005 the public or private enforcement officer, may impose a fine of 400 leva for each contravention. The number of repetitions is unlimited. **Canada (Quebec)** which has a civil law legal system and common law court proceedings: Code of civil procedure, R.S.Q., c. C 25, dealing with judgments given in relation to all kinds of subjects. According to Article 46, the courts and judges have all the powers necessary for the exercise of their jurisdiction; further on Quebec *infra*, note 15. **China (Macao):** The enforcement of return orders follows the Civil Procedure Code and Decree-Law 65/99/M of 25 October 1999 that regulates the "Child Educational and Social Protection Regime". The Decree foresees the "child judicial delivery procedure" which is a specific procedure for the return of a child (not necessarily under the 1980 Hague Convention) who, *inter alia*, has been wrongfully removed from his or her family's home or from the place that one of the parents chose to be the child's home or who is kept away from the institution that has rights of custody over him or her. **Czech Republic:** Articles 176, 272, 273, 273a of the Code of Civil Procedure. The enforcement of return orders is governed by the same provisions as the enforcement of custody orders. **France:** no specific enforcement rules for family matters; Article 423 New Code of Civil Procedure in combination with Articles 11 and 12 of Law No 91-650 of 9 July 1991 reforming civil enforcement proceedings and Article L.751-2 of the Code of Judicial Organisation specify the role of the Public Prosecutor as supreme guardian of enforcement proceedings, who may take all necessary measures and is equipped with authority over the enforcement officers (*huissiers*). **Germany** (but see also the following note); **Greece:** Article 950(1) of the Code of Civil Procedure (return is ordered under penalty of a fine up to 5,900 euros, to be paid to the applicant, or imprisonment, or both; if the child cannot be found, Articles 861-866 will be applied. They are contained in the chapter governing the procedure of voluntary proceedings and deal with sanctions for the denial of giving an affidavit and for non-appearance before the court, such as civil penalties and imprisonment. **Latvia:** Civil Procedure Law, available in English on the website of the Government's Translation and Terminology Centre at < <http://www.ttc.lv/New/lv/tulkojumi/E0044.doc> >; **Lithuania:**

of procedural rules applicable to “non-contentious proceedings”: Some civil law jurisdictions have reserved the application of the Code of Civil Procedure to contentious proceedings that are fully controlled by the parties. In some other areas where there is a stronger State interest and hence a stronger role of the court, a different set of rules of procedure applies. These matters are often called “non-contentious proceedings” because proceedings do not necessarily take place between two opposing parties. The court may also intervene *ex officio*. In Austria, Hague return proceedings and the enforcement of the resulting order are governed by rules of this kind.¹¹ In Germany, this is also still the case to some extent for the return proceedings but as mentioned under I.1., the enforcement of return and contact orders as such is now exclusively governed by specific rules.

31. Some responses – both from civil and common law jurisdictions – referred to a specific law (statute) on the enforcement of decisions¹² or to a child and / or family act, code or law¹³ or to the Civil Code¹⁴ that will apply to the enforcement of Hague return orders.

Articles 650 *et seq.*, 764 of the Code of Civil Procedure apply (see in further detail *infra* under III.B.3. and III.C.1.&2). While performing the enforcement activities, the protection of the rights of the child must be guaranteed. Enforcement costs are regulated by the Instruction on Enforcement of Decisions adopted by order of the Minister of Justice of 31 December 2002 No 432; **Luxembourg**: no specific enforcement rules for family matters; New Code of Civil Procedure applies: Public prosecutor initiates enforcement (Article 1109), assisted by the police if necessary; **Mexico**; **Monaco**: no specific enforcement rules for family matters; Code of Civil Procedure applies (Book IV “On the coercive enforcement of judgments and acts”, Articles 470 *et seq.*); **Romania**: Articles 371–405³ and in particular Article 580²-580⁵, of the Code of Civil Procedure, Vth Book “On coercive enforcement”, in particular Chapter VI, Section IV: “The coercive enforcement of other obligations to do or not to do”; **Slovak Republic**: Articles 272-273c of the Code of Civil Procedure; **Spain**: Articles 1.901-1.909 concerning “Measures relating to the return of minors in cases of international child abduction” were inserted into the Code of Civil Procedure (*Ley de Enjuiciamiento Civil*) of 1881 by the Law on the Protection of Minors of 15 January 1996. They came in force on 7 January 2001 and will remain in force until the new Law on Non-contentious Proceedings enters into force. **Switzerland**.

¹⁰ **Canada (Alberta)**: Provincial Court Act; **Denmark**: According to Article 483 of the Administration of Justice Act, judgments on custody or the exercise of rights of access can be enforced immediately unless a term of enforcement has been provided in the decision. According to Article 536 of same Act, these judgments can be enforced by use of default fines or by direct use of force. Enforcement cannot be levied if it would expose the child to serious physical or psychological harm. In case of doubt the court may grant a stay of enforcement pending the procuring of a child welfare report. **Panama**: Article 1035 of the Judicial Code establishes the obligation to enforce any judicial decision.

¹¹ **Austria**: Article 110(2) of the Act concerning non-contentious proceedings (*Außerstreitgesetz*) permits the use of physical force (physical handing over of the child); Article 79 of the Act provides for a fine to be ordered against the person not respecting the return order. In **Germany**, since 1 March 2005 the enforcement of return orders is primarily governed by § 44 of the new Act on International Family Law Proceedings. For the enforcement of detention and of the obligation of the abductor to give an affidavit concerning the whereabouts of the child, further reference is made to the Code of Civil Procedure (*Zivilprozessordnung*). The provisions on enforcement of decisions in non-contentious matters (§ 33 of the Act on Non-Contentious Proceedings – *Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit*) are no longer applicable but this Act still governs the regime of legal challenges where the 2005 Act does not make specific provision. See further *infra*, para. 124.

¹² **Finland**: The Enforcement Act of 1895, reformed by Laws No 1996/197 and 2003/679, applies in addition to the specific provisions mentioned under question I.1 as appropriate. For example, provisions on the appeal against measures taken by the enforcement officer and measures to locate a child can be relevant in the enforcement of a return order. **Georgia**: Law of Enforcement of 16 April 1999; **Norway**: Enforcement Act of 26 June 1992 No 86. Section 18(1) of the Child Abduction Act refers to Section 42 of the Act of 8 April 1981 No 7 relating to Children and Parents (the Children Act) in 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. **Romania**: Law No 188/2000 concerning enforcement officers (judicial executors) (Articles 1-11, 49-62); their fees are regulated by Order No 1624/C/12.06.2003 of the Minister of Justice. **Turkey**: Where an order requires the defendant to return a child to the plaintiff and he / she fails to do so, the bailiff would take direct forcible steps under Article 25 of the Enforcement and Bankruptcy Law 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 the 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 a parent not having parental authorities, that parent, upon application by the custodial parent, shall be punished by imprisonment for one to three months.

¹³ **Canada (Alberta)**: Child Welfare Act. In **Manitoba** (Child Custody Enforcement Act, C.C.S.M. c. C360, available at < <http://web2.gov.mb.ca/laws/statutes/ccsm/c360f.php> > (French) and < <http://web2.gov.mb.ca/laws/statutes/ccsm/c360e.php> > (English)) and **Saskatchewan** (Children’s Law Act 1997, available at < <http://www.gp.gov.sk.ca/index.cfm?fuseaction=publications.details&p=462> >), the Acts give the court the power to order that a sheriff or peace officer locate, apprehend and deliver a child to a person specified by the court for the purpose of giving effect to custody rights, or to prevent someone from removing the child from the jurisdiction contrary to an order prohibiting such removal. The Acts give the sheriff

32. The rules of the respective Codes of Civil Procedure, as far as they were indicated in the responses to the questionnaire, are mentioned in note 9. Their content is discussed in more detail below, in particular in the parts describing the steps required for enforcement, and the enforcement procedure as such. For some federal States, however, it was not possible for the respondents to go into detail for each state or province. These responses therefore contain a summary overview over the legal situation in the respective provinces, states or cantons which is reflected below:

33. Argentina is a federal State consisting of 24 provinces and of the City of Buenos Aires. Some of them have special laws setting forth the procedural regulations applicable to family proceedings. In all jurisdictions, the respective procedural rules provide for enforcement proceedings, which are very similar. If the defendant fails to return a child, the judge, at the party's request and bearing in mind the circumstances of the case, shall request an officer of the court to return the child to the petitioner, if necessary through the police, a minors adviser, a psychologist, etc. In those provinces where no specific rules exist for family matters, the provisions of the respective Code of Procedure will govern the enforcement of Hague return orders. These Codes provide for the execution of judgments referring to property matters, which shall be applied *mutatis mutandis*.

34. In Mexico, there is no federal legislation unifying the procedure for Hague return proceedings. In the response from Mexico, it was mentioned that this has led to diverging practice because each Mexican state will apply its own substantive and procedural law. *E.g.*, in the Federal District, the Civil Code, the Code of Civil Procedure and the Law on the Rights of Children and Adolescents would apply.

35. In Switzerland, which has 26 cantons, there is currently no federal law implementing the 1980 Hague Convention. The Code of Civil Procedure of each canton therefore governs the enforcement of return orders. In addition, Article 292 of the Swiss Criminal Code makes the non-compliance with a decision of an authority an offence. Under certain circumstances, the abducting parent may also be prosecuted *ex officio* under Article 183 of the Criminal Code for withholding a minor, in particular where the abductor absconds with the child in order to avoid implementation of the return order.

36. Under Article 273 of the Swiss Civil Code, the guardianship authority may remind a parent in particular of his or her duties and give instructions where the exercise or the non-exercise of the right of contact between the child and a parent is harmful to the child. Moreover, the range of child protection measures provided for in the Swiss Civil

or peace officer the authority to enter the premises and search where the sheriff or peace officer has reasonable grounds to believe the child may be located. Applications for these orders may be made *ex parte*. The Act also contains provisions pursuant to which the court can order individuals or public bodies to provide the court (in **Manitoba**; to enable consideration of domestic violence aspects) or the applicant or any other person who the court considers appropriate (in **Saskatchewan**) with information regarding the whereabouts of children in order to enforce a custody or access order. **Chile**: Law No 19.711 regulating rights of access concerning children under the custody of one parent, which modifies Law No 16.618 on Minors, contains the possibility to order imprisonment in case of non-compliance. **Malta**: Child Abduction and Custody Act, Chapter 410 of the Laws of Malta (Act XII of 1999); **Norway**: Act of 8 April 1981 No 7 relating to Children and Parents (the Children Act; see also previous note); **Sweden**: The Children and Parents Code, chapter 21, sections 9 and 11-16, provides the basis for the enforcement of court orders regarding children in all cases relevant to custody issues, including but not limited to, Hague Convention cases. The Code establishes that the enforcement of court orders should be executed as carefully as possible in regard to the child concerned. Additionally, it includes provisions regarding the procedure and legal costs. **United Kingdom**: Section 36 of the Family Law Act 1986 provides that where a court in part of the United Kingdom makes an order prohibiting or restricting removal of a child from the United Kingdom, that order is enforceable throughout the United Kingdom. This could for example be relevant where an order is made keeping the child in the United Kingdom pending a decision on return under the Convention. Section 37 provides for the surrender of the child's passport where required by a United Kingdom court in order to enforce a prohibition on removal from the United Kingdom.

¹⁴ **Lithuania**: Article 3.168 of the Civil Code establishes the parents' right to demand the return of their children from any person who keeps them against the law or a court decision. Following Article 3.272 of the Civil Code, a child's guardian (curator) has the right to demand in court the return of the child from any person who keeps the child unlawfully. This right is guaranteed both to the natural persons appointed by a court decision as guardians or curators and to the Children care institution.

Code includes a warning as well as the withdrawal of parental responsibilities. These provisions do not specifically target the situation of abduction but their scope may cover such situation, in particular the placement of the child in an institution with a view to permitting his or her subsequent return to the State of habitual residence.

37. If one looks at the responses from common law jurisdictions more specifically, many of them indicated in various parts of their responses that there is no enforcement procedure directly effecting return of children, e.g. removing a child from the abductor forcibly and bringing him or her on board a flight. But naturally, many referred to contempt proceedings that may result in the imposition of a fine or even the imprisonment of the abducting parent in case of non-compliance with a court order.¹⁵ Provisions governing contempt proceedings are often contained in Rules of Court. Moreover, as we will see below,¹⁶ often police assistance may be used to enforce the order.

38. Several civil and common law jurisdictions know criminal proceedings for non-compliance with a court order, either in general, or specifically related to custody and return orders; sometimes also child abduction (with or without a Hague return order) is a criminal offence. One or more of these different offences under criminal law exist in Argentina, Canada, China (Macao), Georgia, Greece, Luxembourg, Malta, Monaco, New Zealand, Romania, Spain, Sweden, Switzerland and Turkey.

39. In the response from Canada, various provisions were mentioned that could be used here: the Criminal Code of Canada, sections 286 and 287, as wrongful removal of a child may be a criminal offence, the Extra Provincial Enforcement of Custody Order Act that is intended to assist where children are moved between provinces, the Divorce Act of Canada which peripherally addresses the wrongful removal in section 16(7) by allowing the court to order notice to the non-custodial parent before a custodial parent removes a child to another jurisdiction, and the Domestic Relations Act which governs the parental and guardianship rights of parents, especially unmarried parents, and which is especially important to the determination of unmarried fathers. Part I of Canada's federal Family Orders and Agreements Enforcement Assistance Act¹⁷ allows an *ex parte* court application for an order that certain federal records be searched to obtain the address of an abducting parent, the child or the employer of the parent or child. The statute requires the applicant to have first pursued all possible avenues pursuant to provincial legislation to obtain this locate information.

40. In the response from China (Hong Kong), it was mentioned that arguably one could also apply for a writ of *habeas corpus* to secure the placing of the abducted child under the care and control of, for example, the Director of Social Welfare, pending the child's return. Under section 22A(2) of the High Court Ordinance,¹⁸ an application for writ of *habeas corpus* can be made by or on behalf of a person who claims to be legally entitled to the custody of another person. A writ of *habeas corpus* is independent of any pre-existing court order. Section 22A(1) of the High Court Ordinance provides that: "An application may be made to the Court of First Instance (a) alleging that a person named in the application is being detained without lawful justification; and (b) requesting the issue of a writ of *habeas corpus* in respect of that person."

¹⁵ **Bahamas, Canada (Alberta), (Manitoba)**: Court of Queen's Bench Rules (Manitoba Regulation 553/88 to The Court of Queen's Bench Act, C.C.S.M. c. C280, available at < <http://web2.gov.mb.ca/laws/rules/qbr1e.php> > (English) and < <http://web2.gov.mb.ca/laws/rules/qbr1f.php> > (French)), Rule 60.10, (**Quebec**): Article 49 of the Code of civil procedure, R.S.Q., c. C25, (**Saskatchewan**): Section 29(1) of the Children's Law Act (*supra* note 13); **China (Hong Kong)**: Order 46, Rule 5 and Order 52 of the Rules of the High Court (subsidiary legislation, Chapter 4A, Laws of Hong Kong): writ of sequestration (possession of real and personal property of contemnor may be taken by sequestrators until contempt is purged) or order of committal (imprisonment) for contempt of court; **Cyprus** (civil and criminal proceedings for contempt); **New Zealand, South Africa; United Kingdom (England & Wales, Isle of Man, Northern Ireland, Scotland); United States of America.**

¹⁶ See *infra*, paras. 208 *et seq.*

¹⁷ S.C. 1986, c.5.

¹⁸ Chapter 4, Laws of Hong Kong. Procedural matters relating to applications for writ of *habeas corpus* are governed by Order 54 of the Rules of the High Court.

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).

Case law

41. In response to this question, several replies stated that while there is case law on the Child Abduction Convention, none of these cases specifically dealt with the aspect of enforcement. Sometimes a related aspect, namely undertakings, has been addressed by case law.¹⁹ In several (in particular common law) jurisdictions, enforcement is not an issue because return orders are normally complied with.²⁰ Decisions granting or refusing a stay of enforcement pending a decision on the merits, although they occur frequently, will not be considered here;²¹ the focus is on decisions where enforcement matters as such *are* the merits of the particular proceedings.

42. Some respondents provided a list of Hague cases from their jurisdiction without specifying whether these decisions addressed the issue of enforcement.²² For a limited number of jurisdictions, however, case law on enforcement can be reported: Austria, Croatia, Finland,²³ Germany,²⁴ Portugal, Romania and Switzerland.²⁵ As concerns Finland, Germany and Switzerland, decisions were given by the national Supreme Courts; concerning Austria, Croatia, Portugal, Romania and Switzerland, decisions were given by the European Court of Human Rights.

43. The German Federal Supreme Court clarified that Article 16 of the 1980 Convention also prevents the courts in the State where the return proceedings took place from giving an order on the merits of custody where the return proceedings have already been concluded, return was ordered, but the order has not yet been enforced. The Court discussed a possible interpretation of Article 16 that would allow the courts to make a decision on the merits of custody in cases where enforcement is delayed, and dismissed such interpretation, at least in cases where the delay is caused by the abducting parent or by delayed treatment by the enforcement organs. However, the Court stated – without having to decide this issue in the particular case – that a different view could be considered in cases where the applicant no longer shows any interest in the enforcement of the order.

¹⁹ **Canada, United Kingdom (England & Wales).** In discussing the use of undertakings, the Supreme Court of **Canada** in *Thomson v. Thomson*, [1994] 3 S.C.R. 551; 10 W.W.R. 513; 6 R.F.L. (4th) 290, indicated that “the court must be assumed to have sufficient control over its process to take the necessary action to meet the purpose and spirit of the Convention.” The court of inherent jurisdiction would therefore be expected to make whatever orders might be necessary to enforce an order for return under the 1980 Hague Convention.

²⁰ *E.g. Bahamas, China (Hong Kong), United Kingdom (England & Wales, Scotland* – except for a few cases where the children have refused to return).

²¹ But see *infra*, paras. 99-102, 113-117, 124, 128, 130.

²² **Canada (Alberta):** *Thomson v. Thomson* (*supra*, note 19); *Dehann v. Garcia*, [2004] A.J. No 94; 2004 ABQB 4 (Q.B.); *Proia v. Proia*, [2003] A.J. No 846; 2003 ABQB 576; *Zaman v. Khan*, [2001] A.J. No 948; 2001 ABQB 607 (Q.B.); *Zimmerhansl v. Zimmerhansl*, [2001] A.J. No 896; 2001 ABQB 589 (Q.B.); *Tran v. Ta*, [2001] A.J. No 559 (Q.B.); *K.J.G. v. K.J.B.*, [2000] A.J. No 290 (Q.B.); *Hamel-Smith v. Gonsalves*, [2000] A.J. No 430; 2000 ABQB 269; 185 D.L.R. (4th) 713; 5 R.F.L. (5th) 368 (Q.B.); *Knight v. Knight* [1998] 250 A.R. 89; 2 R.F.L. (5th) 412; 213 W.A.C. 89 (Q.B.); *Nguyen v. Tran*, [1997] A.J. No 1167 (Q.B.); *Hoge v. Hoge* (1994) 162 A.R. 397; 10 R.F.L. (4th) 1; 83 W.A.C. 397 (C.A.); *S. (J.W.) v. M. (N.C.)* (1993), 12 Alta. L.R. (3d) 379; 50 R.F.L. 59 (C.A.); *Kelley v. Williams* (1998), 61 Alta. L.R. (2d) 392; 90 A.R. 107; 16 R.F.L. (3d) 407 (C.A.); **South Africa:** *K. v. K.*, 1999(4) SA 691(C); *W.S. v. L.S.*, 2000(4) SA 104(C); *Sonderup v. Tondelli and another*, 2001(1) SA 1171(CC); *Smith v. Smith*, 2001(3) SA 845 (SCA); *The CFA, Central Authority and R.C. Vonder v. M.S. Vonder* (unreported), Case No 10414/2001(WLD); *Pennello v. Pennello*, 2004(3) SA 100 (NPD); *Pennello v. Pennello* (Chief Family Advocate as *Amicus Curiae*), 2004(3) SA 117 (SCA).

²³ **Finland:** Supreme Court (KKO 3492/1998), 9 November 1998; Supreme Court (KKO 2004:129), 21 December 2004.

²⁴ Federal Supreme Court (*Bundesgerichtshof*), 16 August 2000, Case No XII ZB 210/99, *Entscheidungen des Bundesgerichtshofs in Zivilsachen (BGHZ)* 145, 97, also available at < www.incadat.com > [INCADAT HC/E/DE 467].

²⁵ Federal Supreme Court, 2nd Civil Chamber, 13 September 2001, available at < www.incadat.com > [INCADAT HC/E/CH 423].

44. The Swiss Supreme Court had to decide a case where the court of first instance had refused return in November 1996, the Court of Appeal had ordered return on 6 March 1997 and the second and last challenge against the merits of the return order had been dismissed on 6 August 1997. Subsequently, two attempts to enforce the order failed in October 1997. Between December 1997 and November 2000, mother and child filed several applications on the merits to set aside the return order, annul it or review it. All of them were dismissed, and the dismissal appealed against without success at all available instances, including the Federal Supreme Court. In May 1998 the abducting mother and the child moved from the Swiss canton Zurich to the Swiss canton Aargau. The father's application to enforce the Zurich return order of 6 March 1997 was dismissed by the competent court of first instance of the canton Aargau. On 26 March 2001 the Court of Appeal of the canton Aargau rejected his appeal against the refusal, stating that the four-year-old return order could not be enforced without re-examining the best interests of the child who was now 9 years old.

45. The Federal Supreme Court upheld this decision. The Court stated that the Convention does not contain rules governing the enforcement proceedings and that Article 13(1) *b*) of the 1980 Convention does not apply at the enforcement stage. But even if the latter were the case, under Swiss law, the enforcement court is not entitled to review the return order on the merits. Only the court having jurisdiction on the merits could amend and adapt the return order, should a change of circumstances which arose after the order was made require this. The Swiss Federal Supreme Court may only quash a decision of the lower court if both the reasoning of that court and the result reached are arbitrary. But the enforcement court, when requested to order enforcement, has to examine whether there are any obstacles to this. In the view of the Swiss Federal Supreme Court, in light of Article 3 of the United Nations *Convention on the Rights of the Child* of 20 November 1989 that obliges all public authorities, including the enforcement court, to respect and promote the best interests of the child in all proceedings, the lower court had not acted arbitrarily when it re-examined the best interests of the child in this particular case, took evidence through an expert opinion and refused enforcement based on the evidence taken. The Supreme Court considered it irrelevant in this context that the main reason for the non-enforcement of the order had been the applications and appeals lodged by the abducting mother.

46. In two similar cases concerning the enforcement of Hague return orders, the European Court of Human Rights (ECtHR) in Strasbourg (France) has taken the opposite approach. This international court is an organ of the Council of Europe, an intergovernmental organisation with 46 Member States, all of which are Parties to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR). The Court can be seised with applications by private parties for an alleged violation by State authorities of human rights protected by the Convention. The first decision which is relevant here was given on 25 January 2000 in the case of *Ignaccolo-Zenide v. Romania*²⁶ and the second on 24 April 2003 in the case of *Sylvester v. Austria*.²⁷ In both cases, return of a child was ordered by national courts under the 1980 Hague Convention, but subsequently attempts to enforce these decisions through public authorities remained to no avail. In Romania, four attempts to enforce the return order of December 1994 were made until May 1995 and again in December 1995 by a bailiff, the police and representatives of the Ministry of Justice in the presence of the applicant mother, her lawyer and representatives of the French embassy but the children could never be found. Two years and two months after the return order had been made and seven years after they had last met, the applicant mother and her then 16 and 13 year-old children met for the first time at the children's school in a dramatic encounter. Two

²⁶ *Ignaccolo-Zenide v. Romania*, ECtHR, judgment of 25 January 2000 (Application No 31679/96). See in detail on this case A. Schulz, *The 1980 Hague Child Abduction Convention and the European Convention on Human Rights*, *Transnational Law & Contemporary Problems*, Vol. 12, Fall 2002, No 2, p. 355 (380-390); A. Schulz, *Die Stärkung des Haager Kindesentführungsübereinkommens durch den Europäischen Gerichtshof für Menschenrechte*, *Zeitschrift für das gesamte Familienrecht (FamRZ)* 2001, p. 1420.

²⁷ *Sylvester v. Austria*, ECtHR, judgment of 24 April 2003 (Applications Nos 36812/97 and 40104/98).

days later, the Romanian authorities informed the mother that they would no longer pursue enforcement because the children strongly objected.

47. In the case of *Sylvester v. Austria*, one attempt to enforce the order was made by a bailiff two and a half months after the return order had become final. In the presence of a locksmith, a police officer, the applicant father and a representative of the Youth Welfare Office, the bailiff searched the house of the abducting mother without finding the child. Subsequently, the mother appealed the court's order for coercive measures to be applied, and the enforcement order was eventually set aside by the Supreme Court eight months after return had been ordered and five months after coercive measures had been ordered because, due to the lapse of time, enforcement could now entail a grave risk of physical or psychological harm for the child within the meaning of Article 13(1) *b*) of the Convention. The case was referred back to the Court of First Instance for further assessment of this risk. This court then refused the application to enforce the order, and the Court of Appeal and the Supreme Court upheld that decision.

48. The European Court of Human Rights placed the Child Abduction Convention into a context with the ECHR. Article 8 ECHR protects the right to family life, and this is first and foremost meant to prevent the State from actively interfering with family life. However, there are also situations where Article 8 ECHR would oblige a State to take positive measures to remedy a situation created by others, in particular private parties, which interferes with the right of a person to family life. This is the case in a situation of international child abduction: it interferes with the right to family life of both the child and the left-behind parent. In general, Article 8 ECHR obliges the State to take all appropriate measures that can reasonably be expected from its authorities in the particular situation to remedy such interference. In order to determine *what* can reasonably be expected, the Court in both the *Ignaccolo* case and in the *Sylvester* case stated that the positive obligations that Article 8 ECHR lays on the Contracting States in the matter of reuniting a parent with his or her child must be interpreted in the light of the Hague Convention. In cases of non-return, be it on the basis of a refusal by a court to return the child, or on the basis of insufficient enforcement of a return order, the action to be taken by the requested State will be measured against Article 7 of the Child Abduction Convention which contains a list of measures to be taken by States to secure the prompt return of the child. Moreover, the Court specified with regard to the enforcement of Hague return orders that the use of force shall normally be considered against the abducting parent only. Concerning the child, the use of force is explicitly declared undesirable. In light of the child's best interests and the rights of the child as equally protected by Article 8 ECHR, the stress here lies on measures preparing the child for re-unification with the left-behind parent, in particular in cases where contact between the child and the left-behind parent had been cut off for a long time.²⁸ Reference was made to child psychologists or child psychiatrists as well as social services, all of which should be used to prepare the child for the encounter and ultimately the return.

49. In the *Sylvester* case, the Court accepted "that a change of circumstances after the order was made may exceptionally justify the non-enforcement of a final return order. However, having regard to the State's positive obligations under Article 8 and the general requirement of respect for the rule of law, the Court must be satisfied that the change of relevant facts was not brought about by the State's failure to take all measures that could reasonably be expected to facilitate execution of the return order."²⁹ In this respect, the Court referred in particular to lengthy enforcement proceedings.

50. In its judgments given in the cases *Maire v. Portugal*³⁰ and *Karadžić v. Croatia*,³¹ the European Court of Human Rights confirmed that each State Party to the 1980 Hague Convention must equip itself with an adequate and sufficient legal arsenal to ensure

²⁸ *Ignaccolo-Zenide v. Romania* (*supra* note 26), paras. 106, 112 *et seq.*

²⁹ *Sylvester v. Austria* (*supra* note 27), para. 63.

³⁰ *Maire v. Portugal*, ECtHR, judgment of 26 June 2003 (Application No 48206/99), [2004] 2 FLR 653.

³¹ *Karadžić v. Croatia*, ECtHR, judgment of 15 December 2005 (Application No 35030/04), [2006] 1 FCR 36.

compliance with the [...] international agreements it has chosen to ratify. This includes the availability of effective sanctions against an abducting parent who refuses to comply with a Hague return order, and their actual enforcement; the mere imposition is not enough.³² The Court recalled that in cases of this kind the adequacy of measures taken by the authorities is to be judged by the swiftness of their implementation; they require urgent handling as the passage of time and change of circumstances can have irreparable consequences for relations between the children and the parent who does not live with them.

51. Very recently, on 22 June 2006, the European Court of Human Rights has given another decision concerning the enforcement of Hague return orders in the case of *Bianchi v. Switzerland*.³³ Here the Swiss mother absconded with the child during a period of contact in Switzerland in December 2003. The Swiss court of first instance in January 2004 ordered the deposit of the child's travel documents and that the child not be removed from Switzerland pending return proceedings. In April 2004, the Italian father was granted a weekly right of contact pending return proceedings. In May 2004, the court of first instance refused return, based on the refusal of the 4 ½ year-old child and a report of a social worker that had been established following observation of the first two contacts between father and child. Subsequently, nine further meetings of supervised contact took place between father and child between 24 April and 18 July 2004. On 30 July 2004, the cantonal Court of Appeal ordered the return of the child to Italy by 31 July 2004 at the latest, to be enforced by police assistance if necessary. The mother absconded with the child and declared through her lawyer that she would not comply with this order pending the decision on the further appeal she intended to file against it. Upon convocation by the police, she was interrogated on 15 August 2004. She declared that the child was in a safe place which she refused to reveal, and that she would comply with a return order by the Federal Supreme Court, should that Court dismiss her appeal. After the interrogation, the police let her go. On 15 October 2004, the Federal Supreme Court dismissed the mother's appeal and ordered the return of the child. Since early September 2004, numerous investigations including the supervision of bank accounts and telephone lines as well as inquiries with social security institutions etc. were carried out by the Swiss authorities in order to locate mother and child, but at the time of the decision of the ECtHR on 22 June 2006 they had still not been found.

52. A particularity of the case is that the mother had already abducted the child to Switzerland before, and had complied with the Swiss return order in that earlier case. She had returned to Italy with the child, lived in a flat provided by the father in the vicinity of his house, and the parties had agreed on the contact periods during one of which she eventually retained the child in Switzerland. The ECtHR found that the Swiss authorities had not taken all measures that could reasonably be expected to achieve a reunification of father and child. The Court acknowledged the efforts made by the Swiss authorities since September 2004 and in particular after the return order had become final in October 2004, but it found that the Swiss authorities had not taken sufficient steps to locate the child and ensure compliance with the return order *while the mother's appeal was still pending*. It criticised in particular that the Swiss police had interrogated her on 15 August 2004 (when she had already taken the child into hiding and declared that she would not comply with the not yet final return order before her appeal was decided) without starting an observation to locate the child. In light of the history, namely the previous abduction, the Court found that it had been unreasonable of the Swiss authorities to trust the mother's statement that she would eventually comply with a final return order, without taking any precautionary measures.

Practice directives and guidelines

53. As concerns practice directives or guidelines, from the responses it is not easy to draw a clear line between quasi-binding in-house instructions for certain professionals in particular cases and guidelines which are more of an informative nature and meant to be

³² *Maire v. Portugal* (supra note 30), para. 76 ; *Karadžić v. Croatia* (see previous note), paras. 61 *et seq.*

³³ *Bianchi v. Switzerland*, ECtHR, judgment of 22 June 2006 (Application No 7548/04).

of general assistance to those involved in enforcement and sometimes to the general public. Texts that appear to be for the internal use of professionals when exercising their duties will be listed here while publications that appear to be targeted also at parents and the public at large will be listed under question VI.3., which refers to training and information material.

54. A number of jurisdictions indicated the existence of guidelines. They seem to be addressed to different actors in the course of return proceedings such as Central Authorities, courts and enforcement officers. A first set appears to be dealing with Hague return proceedings in general, including enforcement:

55. In Mexico and South Africa, a practice manual setting out guidelines for the application / interpretation of the Convention has been compiled by the Central Authority. It forms the basis upon which the Central Authority and its appointees discharge their duties in terms of the Convention. In New Zealand, the Family Court Case flow Management Practice Note issued by the Principal Family Court Judge in September 1998 has a chapter on proceedings under the 1980 Convention for a return order. The Practice Note lists the issues to be addressed by the judge or registrar, which includes the need to issue a warrant for the uplift of a child for the purpose of enforcing any return order granted. The Practice Note also states that applications for return orders should be determined within 6 weeks, or 13 weeks where a specialist report or other evidence, material or information is required which cannot be obtained immediately. In Norway, Circular letter G-136/91 gives guidelines regarding the interpretation and practice of the Child Abduction Act, the Hague Convention and the European Custody Convention.

56. The following guidelines seem to target enforcement more specifically: In Finland, the Ministry of Justice has given guidelines (Dno 3553/36/96) specifically to the enforcement officers concerning the enforcement of decisions on child custody and rights of access. They apply to the enforcement of return orders *mutatis mutandis*. Several jurisdictions also have guidelines for the police: In Canada, there exist Canadian Model Parental Child Abduction Charging Guidelines for prosecutors and police officers. In China (Hong Kong), the police have incorporated the handling procedures for requests from the Central Authority and the public in its internal orders. The Central Authority for Scotland together with the police produced practical police guidelines on the unlawful removal of children abroad in October 2001. These were made available to all police forces in Scotland as a point of reference for officers who are faced with situations where children have been abducted. In the United States of America, the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), has published a "Law Enforcement Guide on International Parental Kidnapping", which contains information and guidance for law enforcement on recovery of children and reunification of children with left-behind parents.³⁴ The National Center for Missing and Exploited Children (NCMEC, which is the Central Authority for abductions to the United States) and OJJDP have also published a guide entitled "Recovery and Reunification of Missing Children: A Team Approach", which provides guidance on the use of mental health and child protection specialists along with law enforcement in recovery of an abducted child.³⁵ In Germany, the Federal Ministry of Justice has organised two seminars for enforcement officers (bailiffs) on the enforcement of Hague return orders, contact orders and orders with regard to domestic violence in 2005 and 2006, each in co-operation with a German state and the German Association of Bailiffs. At those seminars, a checklist³⁶ was developed for each type of order, which is supposed to assist the bailiff in making the necessary arrangements. At the outset, the relevant legal bases for enforcement and their main principles (such as urgency, enforcement *ex officio*) are outlined. For Hague return orders, formal requirements under German law are listed such as enforceability, finality, additional conditions for particular

³⁴ This publication can be ordered through the OJJDP website, at < <http://ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=194639&ti=&si=&sei=&kw=parental+kidnapping&PreviousPage=PubResults&strSortby=&p=&strPubSearch=Y> >.

³⁵ This publication can be downloaded at < http://www.missingkids.com/en_US/publications/NC64.pdf >.

³⁶ A translation of the checklist as developed in 2005 can be found in Annex V.

coercive measures such as the use of physical force to be applied, and practical arrangements to be made. Suggestions include a list of important telephone numbers of persons or institutions the bailiff should have at hand during enforcement. Where so required by the circumstances, the bailiff might also consider inviting some or all of these persons to be present during enforcement: the Youth Welfare Officer in charge of the case, competent police station and officer, competent family judge, interpreter, locksmith and the applicant. Suggestions are made to the enforcement officer for preparatory discussion with the Family Court, the Youth Welfare Office and the applicant, and issues possibly requiring clarification are mentioned in the checklist. The importance of making arrangements for the actual delivery of the child to the applicant or a person designated by him or her before enforcement begins is highlighted, and the bailiff is invited to consider places of enforcement other than the home of the abducting parent, such as school or kindergarten. Attention is drawn to a possible involvement of the media and the importance of being prepared to deal with this. Finally, it is suggested to consider asking a fellow bailiff to assist (in Germany, bailiffs normally work alone). This list is being further developed in discussions with the bailiffs at each seminar. At the 2006 seminar, some bailiffs reported that in similar cases, the presence of both a male and a female bailiff had proved helpful. It was also mentioned that some courts transmit to the bailiff only the order to be enforced (*i.e.* the *dispositif / Tenor / Spruch*, *e.g.* "The child is to be taken from X and handed over to Y for the purposes of returning to State Z."), not the statement of the facts of the case and the reasons of the court, which makes it difficult for the bailiff to assess the situation in advance. The bailiffs were encouraged to approach the court for full information in such a case. Others suggested that in problematic cases the presence of the judge would be useful because under German law, a bailiff may only execute such coercive measures as previously ordered by a judge. If they prove to be insufficient, enforcement has to be suspended, and following a new order, a new date for enforcement has to be fixed. This could be avoided by a judge being present at the scene of enforcement. In the response from Austria to the questionnaire it was mentioned that if necessary, the judge could give instructions to the bailiff by telephone during enforcement.

57. These last examples show how much the actual design of the national enforcement system in law and practice determines what can be recommended as good practice. Each system has to be looked at in its own right, and suggestions for improvement will have to be made largely within the framework set by existing national structures.

I.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?

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

VII.6. Have you any general comments to make regarding the enforcement of Hague return orders?

58. A number of additional comments were made in answer to these questions.

59. Several – in particular common law - jurisdictions indicated that so far they had not encountered any problems at all or only very limited difficulties in this respect.³⁷ It was mentioned that the law concerning coercive enforcement is not developed because return orders are normally complied with. *E.g.* on the Isle of Man, no Hague return order had to be enforced by coercive means yet. In those jurisdictions, it is often felt that the existence of contempt proceedings is enough of a deterrent, but it is also underlined that these tools, which could eventually lead to the detention of the abducting parent, should be used as a last resort. New Zealand attributes the absence of difficulties to the country's small geographical size, a centralised system of government and courts, and the high levels of co-operation between government agencies involved in enforcing return orders.

³⁷ Cyprus, Denmark, Malta, New Zealand, United Kingdom.

60. On the other hand, Italy, which had a percentage of coercive enforcement ranging from 24% via 39% to 57% of all return orders made in the three years examined here (2001-2003), states that the enforcement procedure in Italy has always worked very well.

61. The need for legislation providing the judge with a legal framework that permits the expeditious application of the Convention and the resulting enforcement proceedings was highlighted.³⁸ Some States reported changes in their implementing legislation that had been made in order to enhance the efficiency of the application of the Convention, including at the enforcement stage. Several countries, e.g. Austria, Bulgaria, Denmark, Finland, France, Germany, Romania, Sweden and the United Kingdom have concentrated jurisdiction for Hague return cases in one court, or a limited number of courts. Some have limited the number of possible challenges against return orders and the number of levels of appeal, and / or introduced tight timeframes for them. Germany recently changed its legislation governing the enforcement of Hague return orders in two respects: In Germany, under the general legislation applicable to non-contentious matters including family matters, a judgment debtor has to be notified first that non-compliance with an order is under penalty of a particular coercive measure (fine or imprisonment, physical force). Then the particular measure subsequently has to be ordered in the case of actual non-compliance. In the past, often the possible penalty was fixed and notified to the defendant after the return order had been made. The notification of the penalty, and the following order actually imposing it, could be challenged separately, in addition to any challenge against the return order. Now under the new legislation the possible penalty shall be announced in the return order and is no longer subject to separate challenge. Moreover, where the first instance order granting or refusing return is challenged by an appeal and the Court of Appeal either confirms the return order or quashes a refusal and orders return, the Court of Appeal is in the future responsible for the institution *ex officio*, and the supervision of, coercive enforcement of the return order. In the past, enforcement was always under the responsibility of the court of first instance, and a request by the applicant was necessary. The transfer of the file back to the court of first instance, and the fact that sometimes the foreign applicant was not aware of further steps to be taken, led to some delay. It is expected that the new system will speed up enforcement because the Court of Appeal is also closest to the latest state of facts and thus best placed to order the appropriate enforcement measures.

62. Several respondents underlined that the terms of a return order should be made as specific as possible and the practical details of enforcement of the order and its implementation should be fixed in the return order itself, to avoid the risk of fleeing. For example, it may be specified in the return order that the child shall be allowed by the Immigration Department to leave the country for return to the place of habitual residence on board a particular pre-scheduled flight only. According to the experience of the Swiss Central Authority, a return order which is explicit on this issue, for example because it contains instructions on the way to proceed to its enforcement, including financial responsibilities, favours the return of the child.

63. In the response from Mexico, it was underlined that in accordance with the legislation in force in all Mexican States in the area of family law, the family courts may intervene *ex officio* in all family matters, in particular affecting minors, and family judges enjoy ample powers to order the measures required to protect these minors. Due to this system, it is not necessary to involve practicing lawyers in return proceedings before Mexican courts. Similarly, in Bulgaria the role of the court in Hague return proceedings is strengthened by Article 506 of the Code of Civil Procedure as amended by the law implementing the 1980 Convention: The court may take evidence on its own motion and assist the parties in the exercise of their procedural rights. As mentioned above,³⁹ the courts may take some initiatives on their own motion, regardless of any application by a party, in a number of jurisdictions, e.g., further to those mentioned above in this

³⁸ Argentina, Mexico, Switzerland.

³⁹ See *supra*, para. 30.

paragraph, also in Austria, Germany, Canada (Quebec) and all common law jurisdictions where this is part of the inherent powers of the court.

64. Some specific problems were also highlighted: The United Kingdom (Scotland) mentioned that it has been shown in the past that if a child is ordered to return to the country of habitual residence against the wishes of that child, then there is little that can be done to ensure the child complies with the order. Neither the police nor court officers would be in a position to physically force a child onto a plane or ferry and neither an airline nor a ferry operator would allow a child to travel against their will in a distressed state.

65. Several respondents indicated that such cases, in particular where they involve abducting mothers who are nationals of the requested State, young children, and enforcement with the assistance of the police, often generate high interest in the media. It is felt that the abducting parent often manipulates the media, which then launch a campaign in his or her favour. Lobby groups add to the pressure. Often the media describe the role of the authorities involved in a very negative way, and in general it is stated that this coverage by the media does not help to resolve the underlying dispute of the parents.⁴⁰ These events can considerably delay enforcement or even make it fail.

66. In the response from the United States of America it was mentioned that undertakings or pre-conditions on return involving actions to be taken in the requesting State are rarely issued in the United States. The response from Canada (Saskatchewan) addresses the case where undertakings of a particular kind were given: The Central Authority responded that in cases where a child has been returned to Saskatchewan on the condition that the left-behind parent bring a court application forthwith and the latter does not do so once back in Saskatchewan, the Central Authority would monitor this situation but it is doubtful that a Saskatchewan court could enforce this type of an order.

67. Lithuania suggests that the formulation of principles regarding the enforcement of return orders should also include the enforcement of orders relating to the surrender of an unlawfully removed child to the applicant under the *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children* (the European Custody Convention).⁴¹

⁴⁰ **Czech Republic, Netherlands, Switzerland.** See also the **Swiss** comments under III.C.4. concerning post-decision mediation in such cases. On mediation in general in Hague return cases see the comments under III.B.3.b).

⁴¹ European Treaty Series (ETS) No 105.

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

68. In almost all jurisdictions that responded to the questionnaire it is possible to challenge Hague return orders. Among the 41 jurisdictions that responded, only in the United Kingdom (Montserrat), no legal challenge exists in Hague return cases.

Ordinary challenges

69. In a number of jurisdictions, there is only one level of ordinary challenge against a Hague return order.⁴² The most common system, however, seems to be one that permits two levels of ordinary challenge.⁴³ Annexes I and II contain an overview of systems with one and two levels of ordinary challenge, the courts hearing these challenges and the timeframe for the challenge to be filed. Sometimes leave is required for the second challenge⁴⁴ which has to be granted either by the court whose judgment shall be appealed,⁴⁵ or by the court which would decide that further appeal.⁴⁶ Sometimes both options exist. In Denmark, such leave has to be granted by the Appeals Permission Board, an independent body consisting of five members: a Supreme Court judge as president plus one High Court judge, one county court judge, one practicing lawyer and one lawyer / jurist with academic background.

70. Some jurisdictions know even more than two levels or types of ordinary appeals. In New Zealand, a decision given by a first instance District Court or Family Court may be challenged before the High Court. Provided that the High Court or the Court of Appeal grants leave, the High Court's decision may be challenged before the Court of Appeal.⁴⁷

⁴² **Argentina, Bulgaria, Chile** (but see also *infra*, paras. 73 and 81, for extraordinary challenges), **China (Macao), Cyprus, Czech Republic, Finland, Germany** (but see also *infra*, para. 72, for extraordinary challenges), **Italy, Malta, Panama, Romania** (since December 2004), **Slovakia** (but see also *infra*, para. 74, for extraordinary challenges), **Turkey** (but see also *infra*, para. 74, for extraordinary challenges), **United Kingdom (Isle of Man)**. For further details see Annex I.

⁴³ **Austria, Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), China (Hong Kong), Denmark, France, Greece, Luxembourg, Mexico, Monaco, Netherlands, Norway, South Africa** (but see also *infra*, paras. 71 *et seq.*, for extraordinary challenges), **Sweden, United Kingdom (England & Wales, Northern Ireland, Scotland), United States of America** (where the case is heard by the federal courts, or by the courts of a state which has only one state appellate level; a further appeal would then go to the U.S. Supreme Court). For further details see Annex II.

⁴⁴ **Austria; Bahamas; Canada (Alberta, Manitoba, Quebec, Saskatchewan); China (Hong Kong)**: leave to appeal must be obtained by showing that the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Final Appeal for decision; **Denmark**: granted only exceptionally; **South Africa**: for all existing challenges; **Sweden; United Kingdom (England & Wales, Northern Ireland, Scotland)**: for further appeal to the House of Lords.

⁴⁵ *E.g.* in **Austria**: Court of Appeal may allow further appeal to the Supreme Court if there is an important legal question and no relevant case law of the Supreme Court exists (so-called *ordentlicher Revisionsrekurs*; see also following note); **Bahamas**: Court of Appeal to grant leave to appeal to the Privy Council but subject to such restrictions, limitations, and conditions as may be prescribed in relation to the matter by the Privy Council in child abduction proceedings; **New Zealand**: High Court (see also following note); **South Africa**: High Court (see also following note); **United Kingdom (Northern Ireland)**: Court of Appeal to grant leave to appeal to the House of Lords.

⁴⁶ **Austria**: If the court of appeal does not allow an "ordinary further appeal" the party concerned may lodge an extraordinary further appeal (so-called *außerordentlicher Revisionsrekurs*; see also previous note) to the Supreme Court and it is up to the Supreme Court to allow it; **Bahamas**: Privy Council has the right to grant special leave to appeal from the decision of the Court of Appeal in any cause or matter; **Canada (Alberta, Manitoba, Quebec, Saskatchewan)**: application for leave to the Supreme Court of Canada; **New Zealand**: Court of Appeal (see also previous note); **South Africa** (see also previous note; if the High Court denies leave to appeal, a petition for leave can be made to the Supreme Court of Appeal); **Sweden**: leave to be granted by the Supreme Court.

⁴⁷ For leave to be granted, it must be shown that the appeal raises some question of law or fact capable of *bona fide* and serious argument in a case involving some (public or private) interest of sufficient importance to outweigh the cost and delay of a further appeal.

The Court of Appeal's decision may then be challenged before the Supreme Court, provided that leave is granted. The Supreme Court must be satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal. In Switzerland, all cantons provide for an appeal, and there is always a public law challenge available to the Federal Supreme Court. Moreover, some cantons provide for an additional second-level cantonal challenge before a cantonal Supreme Court (*cour de cassation*). In the United States of America, both federal courts and courts of the individual states have original jurisdiction to hear Hague cases. There may exist two or three levels of ordinary challenge: In the federal court system, appeals from District Court (court of first instance) decisions are made to Federal Circuit Courts of Appeal. An appeal of a decision made by the Federal Circuit Court may be made to the U.S. Supreme Court, thus resulting in two levels of challenge in total. Where the case is heard by the state courts, there are equally two levels of challenge if a state has only one level of appeal: first to the state Court of Appeal and then to the U.S. Supreme Court. Many states, however, have two state levels of appeal from a trial court determination: an intermediate court of appeal and a final level of appeal. An appeal against a decision of the final state court of appeal may then be made to the U.S. Supreme Court.

Extraordinary challenges

71. In several jurisdictions, there exist extraordinary legal remedies of one or more levels. A large number of them are based on alleged violations of constitutional rights. Sometimes they require the exhaustion of all levels of ordinary challenge, sometimes they may be brought in parallel, at any time. Another type is not so much a challenge but a request to reconsider the issue.

72. The exhaustion of all remedies before lower instances is generally required for the following extraordinary challenges which exist in Argentina, Germany, Spain and South Africa and in the States Parties to the European Convention on Human Rights: In Argentina, in some provinces the decision of the provincial Court of Appeal can be challenged before the Supreme Court of the province, and an extraordinary challenge on grounds of constitutional issues is possible before the National Supreme Court of Justice. Similarly, in Germany and Spain a constitutional complaint could be filed against a final last-instance decision for an alleged violation of fundamental rights as protected by the Constitution. In South Africa, leave may be sought to appeal to the Constitutional Court against any decision of the Supreme Court of Appeal. Leave will only be granted where the decision appealed against stands and falls with this constitutional issue. Where the Supreme Court of Appeal had refused to grant leave to appeal against a decision of the High Court and a constitutional issue is raised, a party may directly apply for leave to appeal to the Constitutional Court. In all 46 States Parties to the European Convention on Human Rights, a complaint for an alleged violation of a right granted by that Convention (e.g. the right to respect for one's family life, or the right to fair proceedings) might be filed with the European Court of Human Rights against a last-instance decision given in a Contracting State.⁴⁸

73. Another group of challenges can be brought at any time during Hague return proceedings. This type of challenge exists in Canada, Chile and Mexico: In Canada, Hague return orders are subject to two levels of ordinary appeal and also to other forms of challenge, e.g., a challenge pursuant to Canada's Charter of Rights and Freedoms⁴⁹ and sometimes also to the provincial Human Rights Act or Charter of Human Rights and Freedoms which would have to be directed against an act of federal or provincial

⁴⁸ See *supra*, paras. 46-52, the discussion of the decisions in the cases *Ignaccolo-Zenide v. Romania*, *Sylvester v. Austria* and *Bianchi v. Switzerland*.

⁴⁹ In Manitoba, there was a return case pending in August 2006 in which a Charter challenge was raised. Another example is the Ontario case of *Parsons v. Styger*, (1989) 67 O.R. (2d) 1 (Ont. S.C.); *aff'd* Ont. C.A., where an absconding mother unsuccessfully argued that a return order would violate her Charter rights under sections 6(1) and 7 (mobility rights and security of the person). In Quebec, a Mexican mother who had abducted her children to Quebec and requested a refugee status also brought a Charter challenge, but the challenge was never heard because the parties came to an agreement. See also *Struweg v. Struweg*, (2001) 280 Sask. R. 243.

legislation. Normally the court would consolidate the proceedings concerning the challenge and concerning the decision on the merits of return and decide them together. In Chile, an (ordinary) appeal (*recurso de apelación*) can be filed against a first instance decision. Against the decision of the second instance, a *Recurso de Queja* can be brought before the Supreme Court. This challenge is exceptional and applies only if the judges of the Court of Appeal committed fault or serious abuse when giving their decision. Normally there is no third instance in Chile in family matters. If the abducting parent has been arrested, he or she can file a *Recurso de Amparo* with the Court of Appeal. This appeal can be filed any time as long as the situation lasts which might violate a constitutional right of the abductor or as long as the coercive measure is under execution. Against the resulting decision, an appeal (*recurso de apelación*) is possible to the Supreme Court. In Mexico, the *Juicio de Amparo Directo* is the ordinary second level appeal. Against this final decision, a writ of review (*recurso de revisión*) may be filed with the Federal Supreme Court of Justice (*Suprema Corte de Justicia*) for an alleged violation of the Constitution. Moreover, a *Juicio de Amparo Indirecto* may be requested at any time for an alleged violation of the Constitution causing irreparable harm, regardless of the state of the case on the merits. These proceedings will be heard by the Federal District Court in Civil Matters (*Juzgado de Distrito en materia Civil*). Against the resulting decision, a writ of review (*recurso de revisión*) may be filed with the Federal Supreme Court of Justice (*Suprema Corte de Justicia*) for alleged violation of the Constitution.

74. Some extraordinary remedies have in common that a court is requested to re-open the case which was already decided at final level by another court, or to re-examine its own decision: In Sweden, the party concerned may exceptionally petition for a retrial. This is a last resort in Swedish procedural law, giving a very limited possibility to reopen the case if the court has manifestly ruled in contradiction with the law or there were specific elements that have, or can be assumed to have, affected the outcome of the case such as procedural fraud, criminal behaviour of court officials or other persons involved or new evidence. In China (Macao), the first instance court may always modify its decision, without prejudice to the effects already produced, where supervening circumstances justify the alteration which either occurred after the decision had been taken or were not raised due to unawareness or any other considerable motive. In Turkey, in principle no further review is possible if the final decision of the Supreme Court at second instance affirms the judgment of the lower court. Exceptionally, however, a petition for revision of its own decision may be filed with the Supreme Court. In Slovakia, there is only one ordinary remedy (appeal) but three extraordinary remedies can be invoked: retrial, review and special review. The (ordinary) appeal is to be filed with the court of first instance as long as its decision has not yet become final. The appeal is heard by the court of second instance. No (ordinary) review is possible against a decision on appeal. A final decision, whether given by the court of first or second instance, can, in limited circumstances, be attacked by extraordinary challenges: the party can file a petition for retrial (which would be heard by the court of first instance),⁵⁰ and the General Attorney can file a petition for special review (which would be heard by the Supreme Court). In addition, a party can file for a review against the final decision of the second instance court. Such review would be heard by the Supreme Court.

75. For the effects of an appeal on the enforceability of the order and the possibility to use coercive measures, see below question II.3.

How often may a particular challenge be made?

76. Almost all jurisdictions that have one or more levels of ordinary challenge against a return order responded that a challenge on each level may in principle only be made once.⁵¹ However, differences in the powers of the courts that decide on a legal challenge

⁵⁰ Retrial is not admissible against judgments that can be changed otherwise.

⁵¹ **Argentina, Bahamas** (appeal to the Supreme Court), **Bulgaria, Canada (Alberta, Quebec, Saskatchewan), Chile, Cyprus, Czech Republic, Finland, Germany, Greece, Italy, Luxembourg, Malta, Monaco, Netherlands, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom (Isle of Man, Scotland), United States of America.**

may lead to some nuances here: While some higher courts always decide the case on the merits, some others do not – or not in every case; they might simply quash the decision of the lower court and remit the case to the lower court for decision. *E.g.*, in New Zealand, an appeal court may substitute new orders, discharge orders, or remit the case back to the inferior court with directions. In some responses it was mentioned that this new decision by the lower court is again subject to appeal. *E.g.*, in Austria, if the Court of Appeal or the Supreme Court quashes the order of the first instance court and gives instructions to the lower court for the continuation of the proceedings, a new order may be appealed again. It is rather common in Austria for the higher courts to remit the case for decision. In Canada (Manitoba), only one appeal lies to the Court of Appeal unless the matter is remitted for re-hearing and appealed after the judgment in the re-hearing is rendered. Here practice is different from what we find in Austria: To date Manitoba has not had a matter remitted for a re-hearing.

Timeframe for legal challenges

77. As concerns time limits, responses referred to various different time limits: for the court of first instance to decide, for filing an appeal, for appellate courts to decide upon the appeal and for the duration of the proceedings as a whole that lead to an enforceable judgment.

78. For ordinary remedies, the time limits indicated for filing a legal challenge at the first (and sometimes only) level range from 5 days⁵² to 60 days.⁵³ Between those two, almost any period can be found⁵⁴ but two weeks (*i.e.* 14 or 15 days)⁵⁵ and 4 weeks (28 or 30 days / a month)⁵⁶ seem to be rather common.

79. At the level of a second challenge, the average time limits appear to be longer. They vary from 9 days⁵⁷ to 90 days.⁵⁸ In Mexico it is 15 days, in New Zealand 20 days (both at the second and third level of challenge), in South Africa and Sweden 21 days (in South Africa from date of decision, for further appeal to the Supreme Court of Appeal). One month is also a timeframe we find in a few more jurisdictions,⁵⁹ as well as two months.⁶⁰

80. Even where the timeframe indicated above appears to be the same in two different States, this is not always the case. The beginning of the relevant period varies: Sometimes it is the date when the order was given, sometimes it is the day the order was filed, or the day it was served. Where, as in South Africa and Switzerland, it is possible for the court to make an order without reasons first and provide reasons later, the period starts to count from the date that reasons were served. Concerning a period

⁵² **Argentina, Chile** (from day that decision was given), **Greece** (from service; for party living abroad), **Panama** (from notification of decision), **Spain** (from service).

⁵³ **Italy** (from service). In **Greece** it could even be three years if the decision was not served.

⁵⁴ 6 days: **Mexico** (against interim order or decree (*sentencia interlocutoria* or *auto*)); 8 days: **Luxembourg** (from service, for default decisions); 9 days: **Mexico** (against final decisions); 10 days: **China (Macao)**; 20 days: **Canada (Alberta – from service), Malta** (from date of judgment), **New Zealand** (extension possible); 3 weeks: **Sweden, United Kingdom (Scotland – from date of decision)**; 6 weeks: **Bahamas** (after delivery of decision), **United Kingdom (Isle of Man, Northern Ireland)** (after return order was filed)).

⁵⁵ **Austria, Bulgaria** (from hearing where decision was pronounced if party was present; from service if party was not present), **Cyprus, Czech Republic, Denmark** (from day that decision was given), **Finland** (from day that decision was given), **France** (against a decree (*ordonnance*)), **Germany** (from receipt of decision), **Luxembourg** (from service, for decisions other than default decisions), **Netherlands** (from date of the order), **Slovakia, South Africa** (from day that decision was given, or from day that the reasons were furnished if court gave decision without reasons first), **Turkey** (from service), **United Kingdom (England & Wales, unless court fixed different time limit or Court of Appeal extended it).**

⁵⁶ **Canada (Manitoba – after judgment is filed, Quebec – from service, Saskatchewan – from date of decision), China (Hong Kong – from day the order was sealed), France** (against judgments, from service), **Monaco** (from service), **Norway.**

⁵⁷ **Luxembourg** (from service of default decision; for contradictory decisions see *infra*, note 60).

⁵⁸ **Greece:** 90 days from service, and as much as 3 years if the decision was not served; **United Kingdom (England & Wales, Northern Ireland, Scotland):** 3 months from date of decision.

⁵⁹ **China (Hong Kong – 28 days from date of decision), Monaco** (30 days from service for party not residing abroad), **Netherlands** (4 weeks from date of the order), **Norway.**

⁶⁰ **Canada** (60 days after decision on appeal was given), **France** (2 months from service for parties residing in France, otherwise 4 months), **Luxembourg** (2 months from service of contradictory decision for parties residing in Luxembourg; various extensions for parties residing abroad, depending on State of residence).

counting from service, there is often an extension of the period if a party resides abroad. Normally the abducting parent will be within the jurisdiction but the applicant will normally reside abroad. Where the first instance refused the return of the child, and it would be for the applicant to appeal, service abroad may take a considerable time, and this can lead to rather lengthy return proceedings.

81. Another area where we find considerable variation is a possible time limit for courts to decide upon an appeal or other challenge. Some jurisdictions have established precise timeframes: The extraordinary *Recurso de Amparo* (as well as an appeal against it⁶¹) in Chile has to be decided within 24 hours. For ordinary appeals, Mexico allows eight days for an interim order or a decree (*auto o sentencia interlocutoria*) to be pronounced, and fifteen days for a definite decision or judgment (*sentencia definitiva*); the period may be extended by eight days if the case is very complex. Spain allows 20 days; Bulgaria and Panama allow 30 days to decide upon an appeal. In these three latter jurisdictions, the appeal is the only ordinary challenge possible.⁶² In Switzerland, the Federal Supreme Court has to decide within six weeks.

82. Some simply mentioned that there is no time limit.⁶³ Several responses nevertheless indicated that although no fixed deadlines exist, courts are obliged⁶⁴ or at least likely to⁶⁵ expedite and fast track the proceedings.⁶⁶ In the response from Spain it was explained that this priority is explicitly laid down in the law and affects the transmission of documents as well as the timeframe that has been established. Examples given for the period after which such fast tracked appeal would be heard, however, vary considerably, e.g. from a few days following the first instance decision in Scotland to 14-15 weeks in England. In Argentina, it would probably take at least two months until a decision is made upon the appeal. For higher courts, times are even longer and unpredictable. In Alberta (Canada), after the appeal is filed it can also take a couple of months for the matter to be finally decided unless the parties agree on an expedited timeframe. In Quebec (Canada), on the other hand, it may only take a few days until the appeal is ready to be heard if the parties agree to proceed without formal facts (as they generally do).⁶⁷

83. In this context, some also referred to the six-weeks-period mentioned in Article 11 of the Convention.⁶⁸ In Quebec, there is a deadline of six weeks for the court of first instance to decide. On a few occasions, the Central Authority has reminded courts of the six-weeks-rule, and responses from the bench were always very favourable. In the United States of America, the Central Authority will contact courts handling Hague Convention matters after six weeks to inquire as to the status of the matter. In general, delay in trial courts is not a widespread problem in the United States. When cases are appealed, normal appellate procedures build in delays to allow for the preparation of a record of the proceedings below, and to give time for filing of appellate briefs and calendaring the case for argument. Recognising that the Convention contemplates an expeditious decision, some courts will waive time limits given in which to file appellate briefs. Other U.S. courts have used expedited procedures to determine the appeal. In New Zealand, the Family Court Case flow Management Practice Note issued by the Principal Family Court Judge in September 1998 states that applications for return orders should be determined within six weeks, or thirteen weeks where a specialist report or other evidence, material or information is required which cannot be obtained immediately. In Switzerland, as mentioned above, the Federal Supreme Court (*i.e.* the

⁶¹ Such appeal has to be filed within 24 hours from the date of the first decision on the *Recurso de Amparo*.

⁶² The **Bulgarian** implementing legislation also fixes a time limit of 30 days for the court of first instance to decide after the application was received.

⁶³ **Argentina, Canada** (for the Supreme Court of Canada; in Quebec there is a deadline of six weeks for the court of first instance to decide, but no such rule for the Court of Appeal), **China (Hong Kong)** – proceedings may be expedited upon urgency being shown), **Czech Republic, Slovakia**.

⁶⁴ **Germany, Luxembourg** (Court of Appeal), **Norway, Spain, Sweden**.

⁶⁵ **Austria, Canada (Saskatchewan), Malta, United Kingdom (Isle of Man)**.

⁶⁶ Hague return proceedings are also fast tracked in the **United Kingdom (England & Wales, Scotland)**.

⁶⁷ Otherwise each party must give the court a factum (a brief) and the matter is set down for hearing as soon as the file is in order.

⁶⁸ **Canada (Quebec), New Zealand, Norway, Sweden, Switzerland, United States of America**.

last instance) has to decide within six weeks. While the jurisdictions mentioned in this paragraph seem to apply a new six-weeks period for each instance, Norway indicated that in case of an appeal, in spite of expeditious proceedings, it would be difficult to comply with the six weeks-time limit for the proceedings as a whole.

84. A few respondents indicated that in their respective jurisdiction, legal challenges are rarely brought against return orders,⁶⁹ or even that this has never happened.⁷⁰ In Canada (Manitoba), to date, only one Manitoba case has been appealed to the Supreme Court of Canada (*Thomson v. Thomson, supra* note 19). In China (Hong Kong), there has only been one appeal to the Court of Appeal since the entry into force of the Convention in 1997. In the response from the United Kingdom (Scotland), concerning first-level appeals this rareness is attributed to the fact that grounds for appeal are limited to matters such as a significant change in circumstance or the judge having misdirected himself. The same or similar grounds apply in more jurisdictions⁷¹ while others responded that the appeal is not subject to any restriction.⁷² The second-level challenge of cassation in France and some other legal systems is however limited to points of law.

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).

b) Which is the competent organ for these decisions?

85. In response to this question, many stated that a return order is immediately effective. The purpose of the question, however, was not to explore whether a defendant is bound by the order and *should* comply with it as soon as the order is made, but rather to investigate what would happen in the absence of voluntary compliance. Would the mere return order be enough, for instance, for a law enforcement officer to go and fetch the child or to impose a fine or imprison the abductor, or is anything else required – a registration of the order for enforcement, a *formule exécutoire*, a specific mention by the court that the enforcement officer should act in a particular way, the penalty of a fine or imprisonment ordered by the court, etc. In other words, “enforcement” as used in the question was intended to refer to “enforcement by coercive measures”, not to “implementation” in general, including voluntary compliance.

86. But even under this premise the question whether an additional act / step / authorisation is required for coercive enforcement to begin can refer to different requirements. On the one hand, it can refer to a formality such as a stamp on the copy of the decision which is to be given to the enforcement officer, such as a *formule exécutoire* or *grosse*, the attestation that the decision is either final or has been declared provisionally enforceable or the entry into a registry for enforcement. With the application of this formality, someone (normally the court) assumes the responsibility for compliance with the requirements for coercion and sanctions to be applied, so that the enforcement officer (who in several jurisdictions is not a lawyer) can rely on it and does not need to examine compliance with legal requirements for enforcement himself. Alternatively, or sometimes in addition, it may be necessary for a court to order a *specific* coercive measure before the law enforcement officers are entitled to apply such coercion. This latter aspect is taken up again in questions III.C.6. and 7. where it was asked, more specifically, which particular coercive measures exist in the different legal systems, whether they have to be specifically ordered and by whom before coercion can be applied.

⁶⁹ China (Hong Kong), United Kingdom (Scotland).

⁷⁰ Monaco.

⁷¹ Bahamas: where the judge has misdirected himself in law or failed to sufficiently consider the evidence.

⁷² China (Macao): appeal is admitted on any grounds, including judgments of convenience or opportunity, but the applicant is not allowed to produce, in general, new evidence. Yet the Second Instance Court can determine the renewal of the oral evidence taken by the court of first instance. France (concerning appeal).

87. This present question (II.2.) addresses both aspects – the requirement of any general formality required, such as a stamp or similar instrument, reassuring the enforcement officer that the decision is formally enforceable, and the possible need for any specific coercive measure to be ordered by a judge or other authority. They will be dealt with separately.

Formality requirement

88. In a large number of jurisdictions no further separate authorisation or other decision (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or similar) is required for the actual enforcement of a return order.⁷³ An overview can be found in the first column of Annex III.

89. Several jurisdictions, however, do require a separate formality, which may come under different names, e.g. *formule exécutoire*, *certificado de ejecutoriada*, *auto que despacha ejecución*, executory engrossment (*exequatur*), enforcement order, *grosse*, execution document or registration for enforcement.⁷⁴ In most of these States this formality is issued by the court that has first instance jurisdiction to make return orders.⁷⁵ In Malta, it is the Court of Appeal (which is the second and final instance for Hague return proceedings), and in Romania a separate enforcement court. In Romania, the court that has first instance jurisdiction to make return orders would issue the *formule exécutoire*, but if the return order is not complied with the applicant has to apply to the enforcement officer for coercive enforcement. The enforcement officer then seeks authorisation from the local enforcement court.

90. In most of the States requiring an additional formality, the applicant needs to request its issuance.⁷⁶ This will normally be some time after the order was made because in all these jurisdictions the order normally has to be final in order to be enforceable by coercive measures.⁷⁷ Bulgaria explained that this requirement does not cause any delay because following an *ex parte* application, the *formule exécutoire* will be delivered immediately by a judge of the Sofia City Court.

91. As an additional formal requirement, some mentioned that the order would have to be served upon the person against whom it was to be enforced before enforcement could take place.⁷⁸ In Germany, this is in principle also the case but service can be effected at the same time that the bailiff proceeds to enforcement. In Latvia and Lithuania, the bailiff, when about to commence execution, shall notify the debtor that enforcement will begin if the debtor fails to perform all the pertinent actions within the period set by the bailiff. In Latvia, the bailiff may set a deadline of 10 days or, if the decision is to be executed without delay, at least three days. Chile mentioned that the child would only be handed over to a person other than the applicant if this person was designated in a public document, duly legalised, as the person to whom the child shall be surrendered for the purposes of returning to his or her State of habitual residence.

Order of specific enforcement measures

⁷³ Argentina, Austria, Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), China (Hong Kong, Macao), Cyprus, Czech Republic, Denmark, Finland, France, Germany, Italy, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama, Slovakia, South Africa, Sweden, Switzerland (some cantons), Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland, Scotland), United States of America. Strictly speaking, France and Luxembourg do require a formality, namely a *formule exécutoire*, but in France, the *formule exécutoire* is always included in the return order while in Luxembourg, it is applied at the moment that the judgment is issued. So this is no *additional* and *subsequent* step after the order was made.

⁷⁴ Bulgaria, Chile, Greece, Latvia, Lithuania, Malta, Romania, Spain. In Slovakia, it needs to be stated in the court file that the order was served before coercive enforcement may start.

⁷⁵ Bulgaria, Chile, Greece, Lithuania, Luxembourg, Romania, Spain.

⁷⁶ Bulgaria (applicant may request it directly or through the Central Authority), Chile, Greece, Latvia, Lithuania, Spain (applicant or Central Authority). See also Annex III, second column.

⁷⁷ Or it must have been declared provisionally enforceable. For further details see *infra*, question II.3.

⁷⁸ Argentina, France, Luxembourg (in cases of urgency, however, enforcement can take place immediately (*au vu de la minute*)), Mexico, Norway, Slovakia, Turkey.

92. In most jurisdictions, it is necessary for the court to order *specific* coercive measures before the enforcement organs may apply them.⁷⁹ This will often be done in the initial return order, either routinely or at least if there are indications that non-compliance can be expected.⁸⁰ In other cases such measures will be ordered later if the need arises because the defendant does not comply voluntarily.⁸¹ Where the measures are included in the initial order, sometimes they are only “threatened” there as a penalty in case of non-compliance.⁸² In these cases, normally an additional court order is necessary in order to “activate” the penalty and actually impose the sanction. In Romania, however, under a new law that entered into force at the end of 2004,⁸³ in case of non-compliance the Central Authority shall transmit the information concerning the fine ordered and the lack of compliance to the financial authorities so that the fine can be levied. If after the levy of the fine the abductor still does not comply, the applicant or the Central Authority may request the court to impose another fine and / or order imprisonment.

93. In most of these jurisdictions requiring a court order for some or all of the coercive measures available, such order (concerning civil law measures) would be made by the court that also made the return order.⁸⁴ In Finland, the Helsinki Court of Appeal has exclusive jurisdiction over Hague return applications at first instance, but it would be for the competent district court to order enforcement. The Helsinki Court of Appeal on its own motion transmits the return order to the competent district court, and the latter shall order the child to be fetched. Should the measures ordered prove insufficient, in all jurisdictions mentioned in this paragraph it would be for the same court to order more rigid measures if these exist in the legal system concerned. China (Hong Kong) and Norway mentioned that often this will not be necessary because the court will order a range of gradually increasing measures already in the initial order, and it is for the enforcement officer to gradually apply them. Only where the range of measures ordered is exhausted without having produced the return of the child, new measures will have to be ordered by the court.

94. A court decision ordering specific enforcement measures does not seem to be required at all in Bulgaria, Malta and Turkey where the enforcement organ is entitled to

⁷⁹ **Argentina, Austria, Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong, Macao), Czech Republic, Denmark, Finland** (concerning a fine; concerning the use of physical force see *infra*, note 86), **France** (concerning a fine (*astreinte*)), **Germany, Greece, Latvia** (concerning a fine; concerning the use of police assistance see *infra*, note 86), **Lithuania, Luxembourg** (concerning a fine (*astreinte*)), **Mexico, Netherlands, New Zealand, Norway, Panama, Romania, Slovakia, South Africa, Spain, Sweden, United Kingdom (England & Wales, Isle of Man, Northern Ireland, Scotland), United States of America.**

⁸⁰ **Canada (Alberta, Manitoba), China (Hong Kong, Macao), Cyprus** (order contains a standard clause setting out the consequences of non-compliance), **Germany** (penalty of fine or imprisonment to be threatened in return order for the case of non-compliance; separate order required to order it), **Greece** (penalty of a fine of up to 5,900 euros to be paid to applicant, or imprisonment, or both to be threatened in return order), **New Zealand, Norway** (in the return order the court specifies in what way the child is to be returned. In light of the fact that the child must be returned without delay, it is preferable to provide a prioritised list of alternatives for return. This will prevent the waste of time caused by the court having to decide on a coercive measure if it turns out that the first choice cannot be implemented.), **Romania** (penalty of a fine between 5 and 25 million ROL to be fixed in return order; no further court order required to enforce it), **Spain, Sweden, United Kingdom (Northern Ireland)** (The return order would usually specify the exact details surrounding the return of the child including date, flight details, who is to accompany the child and time of arrival. If the applicant had serious doubts as to whether the return order would be carried out, the return order could have a penal notice attached. However, in making a return order, the Family Judge makes clear to both parties that the details of the return must be watertight and that he will take an extremely dim view of any breach of the terms on the court order.).

⁸¹ **China (Hong Kong), Denmark, New Zealand** (if no specific measures have been included in the order itself), **Romania** (additional fine per day of non-compliance if enforcement of first fine did not produce effect; removal of child from abductor by force and handover to applicant, criminal proceedings), **Slovakia, United Kingdom (Scotland).**

⁸² *E.g.* in **Germany, Greece, Romania.**

⁸³ It was adopted because practical experience had shown that a law on implementation was necessary.

⁸⁴ **Argentina, Austria, Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong: where appellate court first orders return, the court of first instance would have to order coercive measures; Macao), Czech Republic, Denmark, France, Germany** (court whose return order shall be enforced; can be 1st or second instance), **Greece, Latvia, Luxembourg, Mexico, Netherlands, Norway, Panama, Slovakia, South Africa, Spain, Sweden, United Kingdom (Isle of Man, Northern Ireland, Scotland), United States of America.**

decide on the use of all available coercive measures (*i.e.* physical force, fine and in Malta even detention).⁸⁵

95. There are also a number of jurisdictions where a court order is required for some measures but not for others. In Finland, Latvia, New Zealand, Norway and the United Kingdom (England & Wales), some powers to use coercive measures (in all cases physical force) are vested in the enforcement officer.⁸⁶ In another group of legal systems, the public prosecutor plays a prominent role at the enforcement stage and is entitled to request police assistance.⁸⁷ In Cyprus and the Netherlands, the Central Authority may request police assistance without having to go back to the court for an order.⁸⁸ In Sweden, where enforcement of return orders is normally carried out by the police, the court is not even entitled to order the use of physical force because this is an inherent power of the police and exercised according to their discretion. In all the jurisdictions listed in this paragraph, for measures going beyond those described, a court order would be required.⁸⁹

96. This question did not explicitly address who would have to request a court order on coercive measures where such order is required. Responses given to question III.B.1. (Once a return order is made, is a specific request for enforcement necessary?) indicate that in most cases, the court needs to be informed of the facts indicating that non-compliance may be expected or has already been demonstrated,⁹⁰ and normally the applicant would provide such information. This does often not amount to a formal request to order a specific measure but simply enables the court to make any order it deems appropriate to achieve the enforcement of the return order. In Bulgaria and Romania, however, the applicant would have to formally request a fine to be imposed. In China (Hong Kong), usually the applicant in person or through his or her lawyer makes the application for enforcement proceedings to the court, and it should be supported by affidavit detailing the sequence of events leading to the application. In other legal systems, even where a request by the applicant is not required, it is still possible. Sometimes also the Central Authority would apply to the court for certain coercive measures if necessary.⁹¹ In Finland (where the return order is immediately enforceable), the court that ordered return takes the initiative and requests the enforcement court to order that the child shall be fetched.⁹²

97. For further details on the kind of coercive measures available in the different legal systems, see also below question III.C.6. and Annex III.

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?

⁸⁵ **Bulgaria:** fine (also repeatedly), **Malta:** physical force (enforcement officer), detention (executive police), **Turkey:** physical force.

⁸⁶ **Finland, New Zealand, Norway:** If the court has ordered that the child shall be fetched, the enforcement officer is entitled to use appropriate physical force against a person hindering enforcement (but in **Finland** not against the child). **Latvia:** enforcement officer may request police assistance.

⁸⁷ **France, Italy, Luxembourg, Monaco, United States of America** (some states, depending on implementation of UCCJEA; see *supra*, paras. 28 *et seq.*).

⁸⁸ Nevertheless, in **Cyprus** such an order may be sought.

⁸⁹ **Cyprus:** The Central Authority may request police assistance. Where there is suspicion that enforcement will be difficult, there can be a petition for an additional order from the court specifying the role of the police or social services, and contempt proceedings might be started; **Finland:** court order required for imposition of fine; **France:** court order required for imposition of fine (*astreinte*); **Latvia:** court order required for imposition of fine; **Luxembourg:** court order required for imposition of fine (*astreinte*); **Netherlands:** court order required for imposition of fine and imprisonment; **Norway:** court order required for imposition of fine; **Sweden:** court order required for imposition of fine; **United Kingdom (England & Wales):** court order required for imposition of fine or imprisonment (in contempt proceedings).

⁹⁰ This was mentioned, *inter alia*, by **Argentina, Canada (Saskatchewan), China (Hong Kong), New Zealand, United Kingdom (Isle of Man, Northern Ireland), United States of America.**

⁹¹ **Canada (Manitoba), Netherlands, Romania** (in cases where applicant does not benefit from legal aid).

⁹² Where the Helsinki Court of Appeal, which is the first instance in these matters, orders the return of a child, it shall on its own initiative deliver the decision to the competent district court and request it to undertake urgent measures for the enforcement of the decision. Normally, the district court gives the enforcement order on the same day.

98. The preceding question (II.2.) asked, *i.a.*, whether any authorisation for enforcement was required. In the same line of thought, this question aimed at exploring under which conditions such authorisation would be granted, in particular whether a pending appeal has an impact. Nevertheless, this question was also answered by respondents from several jurisdictions where no authorisation for enforcement is necessary. Therefore this part of the Report will discuss in more general terms how the fact that the time for filing an appeal has not yet expired, or the appeal itself may influence the enforceability of the order by way of coercive measures.

99. In one jurisdiction, no appeal is possible against a Hague return order; such order can therefore be enforced as soon as it is made.⁹³ In some other jurisdictions, appeals are possible but at the outset a Hague return order is immediately enforceable, regardless of whether any appeal can still be filed.⁹⁴ If an appeal is actually filed, this will often stay the enforceability of the return order – either by law or if the court so orders in exercising its discretion.⁹⁵

100. In several jurisdictions, though, the situation is exactly the opposite: it is not so much the actual appeal that has an impact on the enforceability of the order but the fact that the time for filing an appeal has not yet expired so that the order is not yet final.⁹⁶ This means that even in the absence of an actual appeal, the order is not enforceable until the time for filing an appeal has expired. Again, in some States the court has discretion to declare the return order (provisionally) enforceable before that moment, while such appeal can still be filed.⁹⁷ If nothing else is ordered later to the contrary, this

⁹³ **United Kingdom (Montserrat).**

⁹⁴ **Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), China (Hong Kong), Cyprus, Denmark, Finland, Italy, Luxembourg, Malta, Mexico, New Zealand, Norway, Panama, United Kingdom (Northern Ireland, Scotland), United States of America.** In **Luxembourg**, the order is by law provisionally enforceable and the judge, in case of necessity, can moreover order actual enforcement to begin immediately.

⁹⁵ **Bahamas:** enforcement will be stayed pending appeal; **Canada (Alberta), (Manitoba):** stay can be ordered because of the appeal or for other reasons, **(Quebec):** Often return orders are enforceable notwithstanding any appeal. If so, a parent who wishes to appeal the order must ask the Court of Appeal to stay execution of the order until the appeal is heard and a decision is rendered, **(Saskatchewan):** enforcement can be stayed upon application of the appealing party; **China (Hong Kong):** An appeal does not automatically suspend the enforceability / enforcement of the order. However, if the return order does not specify a time limit within which the return must be effected, it may not be necessary for the abducting parent to apply for a stay of execution of the Court of First Instance's order pending appeal. If the return order has a time limit within which the return must be effected, the appellant should apply for a stay of execution pending appeal. The application for a stay must first be made to the Court of First Instance, and then to the Court of Appeal if the Court of First Instance refused the application. If the application for a stay is granted, there will be no enforcement of the return order until further directions of the Court. **Cyprus; Denmark:** court of first instance or Court of Appeal can order a stay pending appeal; **Malta:** an appeal will suspend enforcement; **Mexico:** enforcement of interim orders or decrees (*sentencias interlocutorias o autos*) will be stayed where it could cause irreparable harm or would be difficult to reverse if the applicant so requests with reasons; the enforcement of judgments and freezing orders will also be stayed; **New Zealand:** court of first instance or court of appeal can order a stay upon application by a party; **Norway:** court of first instance can order a stay; **Panama:** the appeal suspends the order and its enforcement; **United Kingdom (England and Wales):** enforcement would be stayed pending appeal, **(Northern Ireland):** the return order is stayed pending the appeal, **(Scotland):** in case of an appeal, a stay is likely; **United States of America:** some states; court rules vary with regard to whether stays are mandatory or discretionary.

⁹⁶ **Argentina, Austria, Bulgaria, Chile, Czech Republic, France** (concerning the time for filing an appeal against the first instance decision; at the next level, the decision of the Court of Appeal is automatically enforceable even during the time that a further appeal (*recours en cassation*) can still be filed), **Germany, Greece, Latvia, Lithuania, Romania, Slovakia, Spain, Switzerland** (unless the decision provides otherwise), **Turkey.**

⁹⁷ **Austria** (in exceptional cases the court of first instance may order immediate enforceability irrespective of an appeal), **Belarus** (where it might adversely affect the physical or mental health of the child or result in the impossibility of the enforcement of the decision to leave the child with the abducting parent), **Czech Republic, France** (court of first instance may order provisional enforceability), **Greece, Lithuania** (in cases of urgency and upon a written request of the applicant; the immediate enforceability should in such a case be stated in the enforcement order which would be issued no later than the next working day following the day the decision on the merits was made, and an appeal would in these cases not suspend the enforcement; provisional enforceability could be ordered by the court of first instance as well as the appellate or cassational court. In **Spain**, if the return order was declared provisionally enforceable and is appealed, the appeal stays the enforcement and an application for a new order for provisional enforcement is required for enforcement pending the appeal.

effect will subsist if an appeal is indeed filed.⁹⁸ In other systems, it is not possible to declare the order (provisionally) enforceable where no appeal has been filed and the time for doing so has not yet expired, but if an appeal is then actually filed, the court of first instance⁹⁹ or the Court of Appeal¹⁰⁰ can at this stage declare the order enforceable in spite of the pending appeal.

101. In some responses, no default rule was mentioned so it seems that the court in every case would rule on the question of enforceability pending appeal or while an appeal can still be filed.¹⁰¹

102. As concerns the discretion vested in courts in this respect in some legal systems, two opposed considerations were highlighted. The Ministry of Justice of Norway assumes that the appeal will only be given a suspensive effect where the best interest of the child so requires because the intention behind the Hague Convention is that the child shall unconditionally be returned to the State in which he or she was habitually resident. The Norwegian court of first instance will therefore show restraint in giving the appeal a suspensive effect. Similarly, Argentina considers it appropriate for a court to order that an appeal against a return order shall have no suspensive effect and enforcement can be continued while the appeal is pending. Otherwise it would be almost impossible to comply with the timeframe provided for in the Convention, which would mean failure to comply with the goal of avoiding settlement of the child in the new environment. In the response from Spain, on the other hand, it is pointed out that judges frequently prefer not to order provisional enforceability pending appeal for two reasons: the waiting period is not very long because the Court of Appeal has to decide within 20 days, and it is desirable to avoid repeated removals of the child in case the second instance does not confirm the order of the court of first instance to return the child to the State of habitual residence.

- 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.).**
- 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.**
- 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?**

⁹⁸ **Austria, Canada (Quebec), Lithuania.**

⁹⁹ **Argentina:** The decision has to be final in order to be enforced but when granting leave to appeal, the court of first instance can order that an appeal shall not stay the enforcement. This is special to Hague return orders because of the particular nature of the interests at stake and because it is possible that the abductor makes use of any means to frustrate the return of the child. In **Switzerland**, the initial return order can state that an appeal shall not suspend enforcement. If no such statement is included and an appeal is filed, a separate order is required for the order to be (provisionally) enforceable pending the appeal.

¹⁰⁰ In **Germany**, a first instance return order has to be final in order to be enforceable. The court of first instance cannot order an earlier enforcement. If an appeal is filed, however, the Court of Appeal has to examine *ex officio* whether to order immediate enforceability. According to the relevant provisions, this should be done where the legal challenge is obviously ill-founded or where the return of the child before a decision on appeal is in line with the child's best interests, taking into account the justified interests of the parties.

¹⁰¹ **China (Hong Kong, Macao):** The judge of the First Instance Court is free to determine the effectiveness of the appeal, meaning that (s)he may suspend the execution of the decision in regard to the child's return until the Second Instance Court takes its own decision or, alternatively, order the immediate return in spite of the appeal. **Sweden:** In most Hague Convention cases, the court orders that the decision shall be enforced immediately, unless any of the parties has requested a stay of execution and that request is granted by the court.

103. Like question II.2. above, question II.4. was meant to address both aspects – the possibility to bring a legal challenge against any formality required, such as a stamp or similar formality, reassuring the enforcement officer that the decision is formally enforceable, and the possibility to bring a legal challenge against the order of any specific coercive measure by a judge or other authority. They will again be dealt with separately. Moreover, some respondents also provided information on possible challenges against a decision declaring a not yet final return order provisionally enforceable, and challenges against stays of enforcement. These will be discussed after the remedies against the formalities required.

Formality requirement

104. In those jurisdictions where, according to their response to question II.2., no formality such as a *formule exécutoire*, stamp, etc. is required, question II.3. was therefore not applicable as far as it concerns the possibility of a legal challenge against such formality.¹⁰² These jurisdictions constitute by far the largest group of respondents.

105. As described above, a number of jurisdictions do however require a formality, which may come under different names, e.g. *formule exécutoire*, *certificado de ejecutoriada*, *auto que despacha ejecución*, executory engrossment (exequatur), enforcement order, execution document or registration for enforcement.¹⁰³ In some of these jurisdictions this formality may not be challenged separately.¹⁰⁴

106. Bulgaria, Finland, Greece, Malta, Romania and Spain provide for a separate legal remedy against this formality that makes a national decision enforceable by coercive measures. However, in Bulgaria, Finland¹⁰⁵ and Spain, such appeal would not suspend enforcement.

107. In Bulgaria, a *formule exécutoire* has to be requested from the court of first instance (Sofia City Court) once the order has become final. The decision granting or refusing the *formule exécutoire* can be appealed to the Sofia Court of Appeal within 7 days, beginning for the abducting parent from the date of delivery of the writ for voluntary compliance, but the appeal would not suspend enforcement. Since the *formule exécutoire* may only be granted after the order on the merits has become final and can no longer be appealed, the challenge of the order on the merits and the challenge brought against the *formule exécutoire* can never be brought simultaneously; they belong to different stages of the proceedings. They would however be heard by the same court.

108. In Finland, the Helsinki Court of Appeal has exclusive jurisdiction for first instance return orders; the competent district court shall then order enforcement. Such an order of the district court to enforce the decision can be appealed to the competent Court of Appeal. For a further appeal to the Supreme Court, leave is required. The Supreme Court is also the only authority hearing appeals on the merits of a return order given by the Helsinki Court of Appeal. Both challenges (against the merits and against the enforcement order) would thus be heard by different courts at the first level. They may be brought at different times or simultaneously. This is possible because in Finland, an order is immediately enforceable even if not yet final.

109. In Greece, a revocation request can be submitted to the court of first instance if the latter has granted the executory engrossment of a final order. The request may only be made once and cannot be appealed. The order on the merits may be challenged before

¹⁰² Argentina, Austria, Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), China (Hong Kong, Macao), Cyprus, Czech Republic, Denmark, Finland, France, Germany, Italy, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama, Slovakia, South Africa, Sweden, Switzerland (some cantons), Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland, Scotland), United States of America.

¹⁰³ Bulgaria, Chile, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Romania, Spain.

¹⁰⁴ Chile, Latvia, Lithuania, Luxembourg.

¹⁰⁵ Unless otherwise ordered by the Court of Appeal.

the Court of Appeal and subsequently before the Court of Cassation. Depending on the circumstances, the challenges against the enforcement formality and against the order on the merits can therefore be filed with these different courts simultaneously or at different times.

110. In Malta, where the enforcement order needs to be registered in the registry of the Court of Appeal, any interested person may present an application in the Court of Appeal, in order to state why there should not be recognition of the enforcement order. The Court of Appeal will decide the matter as expeditiously as possible. This is also the court that will hear the one possible challenge on the merits.

111. In Romania, a *formule exécutoire* is required from the court that made the order at first instance. If subsequently the return order is not complied with, the Central Authority will transmit the information to the financial authorities so that the fine which has to be ordered in the return order for the case of non-compliance can be levied. If after the levy of that fine the abducting parent still does not comply with the return order, the applicant has to request the enforcement officer to enforce it. The latter will seek approval of enforcement from the enforcement court, submitting to it a copy of the request and the enforceable decision. After the court has given its approval, enforcement may start. The court's approval is subject to appeal within 15 days. Like in Bulgaria, the challenges against the formality granting enforcement and against the merits of the order can never be brought simultaneously because the enforcement will only be permitted once the order is final and can no longer be challenged on the merits.

112. In Spain, an order granting enforcement is required once the return order has become final. It will be issued upon request of a party or the *Ministerio Fiscal*, which is an organ within the judiciary under the auspices of the Ministry of Justice.¹⁰⁶ Against this decision, a challenge (*oposición*) can be filed which will be decided by the court that made the order. This decision is then subject to appeal (*recurso de apelación*). A challenge directed against the merits of the return order would be brought before the Court of Appeal (*Audiencia provincial*) and subsequently to the Constitutional Court.

Orders concerning provisional enforceability of not yet final return orders

113. In Luxembourg, the first instance return order is by law provisionally enforceable and the judge, in case of necessity, can moreover order actual enforcement to begin immediately, *i.e.* before the decision was served. It is not possible to challenge the provisional enforceability. The Court of Appeal may only grant a stay where the court of first instance was not entitled to order return.

114. As mentioned earlier, in a number of States where a return order normally needs to be final and no longer subject to ordinary appeal before it may be enforced, earlier enforcement may be allowed. In Germany, if an appeal is filed the Court of Appeal has to examine *ex officio* whether to order immediate enforceability. The decision is not subject to ordinary challenge. However, the Federal Constitutional Court has sometimes granted a stay of enforcement pending an extraordinary constitutional challenge before that Court.¹⁰⁷

¹⁰⁶ One of its duties is to intervene in civil proceedings where those could affect minors. See further < www.justicia.es >.

¹⁰⁷ *E.g.* the Federal Constitutional Court issued various stays of enforcement of a return order in the case of *Tiemann-Lancelin* (2 BvR 1206/98), see the decisions of the 3rd Chamber of the 2nd Senate of 16 July 1998, 31 July 1998 and 17 August 1998, and of the full 2nd Senate of 17 August 1998, staying enforcement first until 3 August 1998, then until a decision on the merits, but no longer than until 16 January 1999. The return order was quashed by 2nd Senate and the case on the merits was remitted to the lower court on 29 October 1998, and on 11 March 1999, a day before the decision of the lower court, the 3rd Chamber of the 2nd Senate of the Federal Constitutional Court again issued a stay until a decision on the merits of a constitutional complaint in case that the lower court should order return and declare the order immediately enforceable. On 31 March and 1 April 1999 the 3rd Chamber rejected the constitutional complaints filed by father and children, and the children returned to France. See in detail on this case A. Schulz, *Internationale Regelungen zum Sorge- und Umgangsrecht*, *Zeitschrift für das gesamte Familienrecht (FamRZ)* 2003, p. 336. Recently, a stay was granted in Case 1 BvR 1465/05, decision of 1st Chamber of 1st Senate of 22 July 2005, *FamRZ* 2005, p. 1657. A stay

115. Other States where provisional (or immediate, as it is sometimes called) enforceability may be ordered, or where the court orders that an appeal shall not stay enforcement, the defendant has a possibility to react. Sometimes this reaction needs to be addressed to the court of first instance that made the order: In Greece, a revocation request can be submitted to the court of first instance if the latter has declared the order provisionally enforceable. The request may only be made once and cannot be appealed. In Spain, if the return order was declared provisionally enforceable and is appealed, the appeal stays the enforcement and an application for a new order for provisional enforcement is required for enforcement pending the appeal. Against this order, *oposición* can be filed within five days with the court that granted the order. If a *Recurso de Amparo* is filed with the Constitutional Court, the latter may order a stay of enforcement of the return order on the merits or of any measure ordered during enforcement if in light of the circumstances it considers this to be in the interest of the child. An explicit decision with reasons of the Constitutional Court is required to this effect, which would be included in the decision giving leave to appeal to that Court.

116. Sometimes the reaction of the defendant against provisional enforceability needs to be addressed to the court one level above the court that made the order (the Court of Appeal): In Argentina, when granting leave to appeal the court of first instance can order that an appeal shall not stay the enforcement. Upon request, the Court of Appeal can then grant a stay of enforcement. If this is refused, enforcement will begin. This application may only be made once. In France, an application for a stay of enforcement may be filed with the First President of the Court of Appeal if the court of first instance has ordered provisional enforceability, provided that an appeal is also filed against the merits of the return order. In all the jurisdictions discussed in this part, it is not so much a challenge against a decision on provisional enforceability but rather a request for a new assessment of the situation of enforceability – to be made sometimes by the same, sometimes by a different court.

117. In Switzerland, however, we are faced with a “normal” challenge: the initial return order can state that an appeal shall not suspend enforcement. If no such statement is included and an appeal is filed, a separate order is required for the order to be (provisionally) enforceable pending the appeal. This separate order would be subject to legal challenge like any other order.

Order of specific enforcement measures

118. As explained above,¹⁰⁸ in most jurisdictions it is necessary for the court to order *specific* coercive measures before the enforcement organs may apply them. And even jurisdictions where some powers to use coercive measures are inherent in the enforcement organ, or the latter, the Central Authority or the Public Prosecutor may request police assistance, for measures going beyond this, a court order would be required.

119. Question II.4. aimed at exploring whether, in those jurisdictions where a court order or other decision has to specify the particular coercive measures to be applied, such decision is subject to a legal challenge independent of any appeal against the merits of the return order. In some jurisdictions such separate challenge is not possible.¹⁰⁹ The possibility for a separate challenge against the order of specific coercive measures does nevertheless exist in a large number of jurisdictions.¹¹⁰ However, in several jurisdictions

was also ordered in the case 2 BvR 982/95 on 17 March 1995 but lifted when the constitutional complaint was rejected on the merits on 10 October 1995, and in the case 2 BvR 166/96.

¹⁰⁸ *Supra*, para. 92.

¹⁰⁹ **Cyprus, Germany** (if the coercive measure such as fine or detention was ordered by the Court of Appeal), **Slovakia**.

¹¹⁰ **Austria, Bahamas, Bulgaria, Canada (Alberta, Manitoba, Saskatchewan)** – if the coercive measures such as to fetch the child by the police were not included in the original order, it is in theory possible that such order be appealed separately but so far this has not yet happened; **China (Hong Kong), Finland, Germany** (if the coercive measure such as fine or detention was ordered by the court of first instance), **Mexico, New Zealand** (if the coercive measures were not included in the original order), **Romania, Spain, Switzerland**.

the measures will normally be included in the original return order, and any challenge would thus have to be directed against that return order.¹¹¹

120. Where separate challenges are possible, sometimes they follow the same rules as an appeal against the merits of the order;¹¹² sometimes the rules are different.¹¹³ In States where both follow the same rules, both challenges may sometimes be brought either simultaneously or at different times, and if appropriate the court might consolidate the two proceedings.¹¹⁴ Most of them are jurisdictions where the order is enforceable before it is final.¹¹⁵

121. Austria, Bulgaria, Finland, Germany, Romania, Spain and Switzerland have different rules for both types of challenge:

122. In Austria and Bulgaria, such appeal may only be based on a change of circumstances that has arisen after the order was made.¹¹⁶ In Austria it might suspend enforcement while in Bulgaria and Finland it would not, unless the court orders otherwise. In Bulgaria, the parties can appeal the acts of the *juge d'instruction* as well as those of the enforcement organs before the competent regional court (while the Sofia City Court and the Sofia Court of Appeal have exclusive jurisdiction on the merits) within seven days following the communication of the message. This decision is final and binding upon the enforcement organ.¹¹⁷

123. In Finland, the Helsinki Court of Appeal has exclusive jurisdiction for first instance return orders. Where the competent district court has subsequently ordered enforcement,¹¹⁸ this enables the enforcement officer to apply physical force against a person hindering enforcement but not against the child. His / Her decisions may be appealed to the local district court but an appeal does not suspend enforcement unless otherwise ordered by a court. It is also possible to make a complaint to the Ministry of Justice or to the Chancellor of Justice or the Parliamentary Ombudsman who are the supreme guardians of the law. Where other measures are required, such as the imposition of a fine against the abductor or the placement of the child in an institution, this would have to be ordered by the district court. The order of the district court can be appealed to the competent Court of Appeal. For a further appeal to the Supreme Court, leave would be required. The Supreme Court is also the only authority hearing appeals on the merits of a return order given by the Helsinki Court of Appeal. Both challenges (against the merits and against the enforcement measure) would thus be heard by different courts at the first level. They may also be brought simultaneously. This is possible because in Finland, an order is immediately enforceable even if not yet final.

124. In Germany, while the return order as such is subject to "immediate appeal" (*sofortige Beschwerde*), which has to be brought within two weeks, the order of a coercive measure such as physical force, fine or detention by the court of first instance is

¹¹¹ **Canada (Alberta, Manitoba), China (Macao), Greece, Norway, Sweden, United Kingdom (Northern Ireland).**

¹¹² **Canada (Alberta, Manitoba, Saskatchewan), China (Hong Kong), Mexico, New Zealand.** For further details see *supra*, paras. 68 *et seq.* In **China (Hong Kong)**, if the appellant is in custody and appeals against an order of committal, the Court of Appeal may order his release on his giving security for his appearance within 10 days after the appellate judgment is given, see Order 59, Rule 20(2) of RHC. In **New Zealand**, in addition to the legal remedies described *supra*, para. 70, a person against whom an order for the surrender of any tickets, travel documents or passports of the child or person believed to be about to take the child out of New Zealand, or an order that the child not be removed from New Zealand is made may apply to the court that made the order for a discharge of the order.

¹¹³ **Austria, Bulgaria, Finland, Germany, Romania, Spain.**

¹¹⁴ **Canada (Alberta, Manitoba, Saskatchewan), New Zealand.** Similarly, in **Switzerland** it may happen that the initial return order stipulates enforcement details and an appeal brought against the return order attacks either the merits, or the enforcement details, or both.

¹¹⁵ With the exception of **Switzerland**. See further on the Swiss situation *infra*, para. 127.

¹¹⁶ In **Austria**, this restriction follows from a decision of the European Court of Human Rights (see *Sylvester v. Austria*, *supra*, note 27, para. 63).

¹¹⁷ In case of non-compliance by the enforcement organ, a new complaint has to be filed. The enforcement organ is also subject to disciplinary measures.

¹¹⁸ For a challenge against this decision see *supra*, para. 93.

subject to simple appeal (*einfache Beschwerde*) for which no time limit exists. This challenge may be made once, and it has suspensive effect against a fine. Against the order to use physical force and against the order of detention, the challenge does not have suspensive effect. The court that ordered the measure and / or the Court of Appeal before which the appeal against these measures is pending may however issue a stay of enforcement.¹¹⁹

125. In Romania, the enforcement as such and any enforcement measure may be contested. Moreover, although the order on the merits must be final and no longer subject to ordinary appeal before enforcement may start, in a *contestation* at the enforcement stage it is also possible to raise objections against the decision on the merits where the law does not provide for any other remedy by which these objections could be raised. Both may be used simultaneously; the *contestation* may be brought repeatedly and might suspend enforcement.

126. In Spain, an appeal may be filed with the Court of Appeal against the return order on the merits. A decision ordering specific coercive measures (where these have not been included in the return order) may only be challenged by *oposición* within five days, which will be decided by the court of first instance that made the order.

127. In Switzerland, the order has to be final before it can be enforced, unless otherwise ordered by the court. Therefore, normally challenges against the merits of the return order would first have to be brought at cantonal and then at federal level. Subsequently, once the order is final and enforceable, the enforcement or non-enforcement can be challenged. It is however conceivable that the return order itself already fixes details concerning the enforcement and that an appeal against the return order might be directed against either the merits, or against these enforcement details or both.

128. To sum up: Although there are variations, in general the following common features may be distinguished:

- Where the return order has to be final in order to be enforced, the challenges against the merits on the one hand, and against a formality authorising enforcement, or a specific enforcement measure, on the other hand, will never arise simultaneously.
- Where the return order may be enforced before it becomes final, both challenges may normally be brought either simultaneously or consecutively.
- Often a challenge concerning the enforcement formality or a specific enforcement measure has to be brought with the court that ordered this formality or enforcement measure while challenges on the merits will in most cases be decided by a court at a level above the court that made the return order.
- Where a defendant wants to react against an order granting immediate or provisional enforceability, or request a stay of enforcement of an order which is by law immediately enforceable regardless of any possibility for it to be appealed against, such "reaction" is frequently a request (addressed sometimes to the court that made the order, sometimes to a court on the level above it) for a re-examination of the issue of enforceability pending appeal rather than an appeal against the decision granting provisional enforceability.

6. Do you have any other comments relating to legal remedies and the enforcement of Hague return orders?

¹¹⁹ The appeal against an order of imprisonment does not automatically have suspensive effect because the legislator feared that otherwise the abducting parent would go into hiding while the appeal is pending in order to avoid imprisonment. For further details see the German response to question I.1., *supra*.

129. In the view of the Swiss Central Authority, the system of appeals has to take into account the character of the Convention as an instrument of administrative assistance. The application of a generous system with multiple legal remedies, which could perhaps be justified by reasons based on the merits, is not adapted to decisions belonging to administrative assistance. At federal level, only one type of appeal – of a public law nature – is admitted against a return order. *A fortiori*, at the stage of enforcement the legal remedies should be reduced in number and in time.

130. In the response from Mexico the consequences for the child of an elaborate and time-consuming appeal system are pointed out: Proceedings can be prolonged due to the filing of an appeal with suspensive effect as well as the grant of a stay of execution of the government action being contested under a *writ of amparo*; having as a consequence that the children could be in protective custody of the competent authority for a considerable time. This protective custody could last while the procedure is taking place (following a number of procedural requirements) when for example an abducted child has been located and voluntary restitution has not been successful or a compromise has not been reached and the return order is being contested.

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?

131. In some jurisdictions, the courts normally order the surrender of the child to the applicant,¹²⁰ sometimes specified by the words “for the purposes of returning the child to his / her State of habitual residence”.¹²¹ In a few jurisdictions, it is customary to order both the surrender of the child to the applicant and the child’s return to the State of habitual residence.¹²² In a number of other jurisdictions, the courts simply order “the return of the child to State X”, *i.e.* to the State of the child’s habitual residence.¹²³

132. The largest group of jurisdictions consists of those who know both types of order (*i.e.* for surrender to a person and for return to a State). Circumstances of the particular case, and the relief requested, will determine what is ordered.¹²⁴ Courts take into account who was the primary carer (the left-behind parent or the abducting parent), whether the abducting parent is willing to return with the child or to otherwise return the child voluntarily, and whether the applicant is present in the State of refuge at the time of the decision.¹²⁵ In Argentina, for example, the court will normally order the surrender of the child to the applicant if the latter was the primary carer. The same is likely to happen in Canada (Quebec, Saskatchewan), provided that the applicant is present in the State of refuge. If, on the other hand, the abducting parent was the primary carer, courts in these jurisdictions will normally order the return of the child to the State of habitual residence unless the primary carer who has abducted the child is not willing to return with the child. In that case the surrender of the child to the left-behind parent is ordered. In China (Hong Kong), if an applicant is in Hong Kong when the return proceedings are instituted, and there is indication that the abductor is unlikely to be willing to comply with a return order if made, the applicant may even be granted interim care and control of the child and the child will be removed from the abductor as early as possible. As a result, the child can be returned to the State of his or her habitual residence as soon as a return order is made.

133. In Germany, there are various techniques to achieve the aim of the Convention. Either the surrender is ordered in the first place, but in the order it is stated that the abductor can avoid surrender by voluntarily returning with the child to the child’s State of habitual residence. Or the court orders the return of the child to the State of habitual residence, sets a deadline in the order and also orders – either in the same order or subsequently – that in case of non-compliance by the deadline set, the child is to be surrendered to the applicant.

¹²⁰ Georgia, Luxembourg, Norway.

¹²¹ Bahamas, Bulgaria, Chile, Czech Republic, Denmark, Panama, Romania, Sweden.

¹²² China (Macao), Mexico, Netherlands.

¹²³ Canada (Alberta), Finland, France, Greece, Italy, Monaco, New Zealand, Slovakia, South Africa, Turkey, United Kingdom (England & Wales, Isle of Man).

¹²⁴ Austria, Argentina, Canada (Manitoba, Quebec, Saskatchewan), China (Hong Kong, Macao), Cyprus, Germany, Malta, Spain, Switzerland, United Kingdom (Northern Ireland, Scotland), United States of America. In Hong Kong, Scotland and the United States, anecdotally, most orders are however for return of a child to a particular State, not to the applicant.

¹²⁵ Argentina, Canada (Quebec, Saskatchewan).

134. Several respondents mentioned that it is important for courts to make the order as specific as possible. The country of destination is normally mentioned; and some orders contain clear details of the mode of return,¹²⁶ *i.e.* when, how and by whom the child is to be returned. In the responses from Northern Ireland and Spain it is stated that very often such details indicate that the applicant or the respondent will return with the child(ren) to the State of habitual residence. Where surrender of the child is ordered because of the specific circumstances of the case, the importance of specifying details in the orders is equally stressed. Useful details are, *e.g.*, the time and place of the surrender and whether the presence of other professionals such as consular officers, social workers, psychologists or others is required.¹²⁷ In Spain, if surrender is ordered, the order can specify that this has to take place at a Family Meeting Centre, a neutral place for all parties where specialised staff can facilitate the situation for the child. Sometimes such surrender takes place in the presence of a judge in Spain.

135. In Argentina, the judge will play an active role throughout the whole procedure, not only in terms of adjudicating but also by performing coordination functions with other bodies, notably the Migrations Office, Central Authority, etc. He / she will try to achieve general agreement on a handover including the practical details. Experience shows, however, that although such agreement may have been reached, it is important that there is nevertheless a court decision ordering the return of the child. This is of utmost importance since if the agreement is ever thwarted, after a court decision on the return, the enforcement route will still be open.

136. Moreover, in the responses from Canada (Quebec) and Switzerland it was reported that courts had ordered protective measures to be taken in the State of habitual residence of the child following his or her return, *e.g.* for the child to be placed under the care of social services upon arrival in the State of habitual residence.

137. The following examples provided by the Central Authority of Quebec (Canada) illustrate how the circumstances can shape the order:

[The Court:]

Orders the immediate return of the children to the United States, no later than November 30, 2002, along with either their mother or the applicant, as directed by the mother's choice in that regard, which shall be served on the applicant in writing.

Orders the immediate return of the child to Mexico. *Orders* that the child be returned to the custody of the applicant mother.

Authorizes the three minor children to leave Montreal for Connecticut along with their applicant mother no later than September 19, 2003.

Orders the immediate return of the child to Mexico, specifically the child's place of habitual residence. *Orders* that the parties' minor daughter be returned to the custody of the applicant father.

Orders the child's immediate return to the State of Georgia, USA. *Orders* the parties to meet each other at the police station on November 5, 2003, at 2:00 p.m.

Orders the immediate return of the child to the State of Georgia and permits the mother to accompany the child. Should the mother fail to return the child before December 20, 2003, the Court orders the child to be returned to the father's custody with a view to returning to the USA.

¹²⁶ Bahamas, Canada (Manitoba, Quebec), China (Hong Kong), Latvia, Lithuania, Malta, Norway, Spain, Switzerland, United Kingdom (Northern Ireland), United States of America.

¹²⁷ Spain, Switzerland. The Swiss Central Authority encourages courts to make the order as specific as possible.

Orders that the female applicant immediately return the minor children to her residence in the Azores, Portugal.

Orders that the two children be returned to Buenos Aires, Argentina, on or before March 7, 2001, along with the mother, should she decide to return to Argentina with the children; or, along with the applicant father, if the mother decides to remain in Canada.

Orders the immediate return of the children to the USA within 15 days of the date hereof. *Orders* the mother to notify the father in writing within 7 days of the date hereof if she decides to accompany the two children while they return to the USA.

138. See also below question III.C.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?) and question III.C.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*?).

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.**

139. The question was targeted at identifying the primary goal of coercive measures applied by the enforcement organs: Where the standard order is to hand over the child into the physical care of the applicant (in the State of refuge), this is self-explaining. But even where the order as such orders the return of the child to a particular State, it may occur that this is put into place by removing the child from the abductor and handing him or her over to the applicant or a person designated by the latter. In that case, often the "execution" (application of coercive measures by enforcement organs) is completed with the handover and perhaps the case is considered closed, although the child is at this moment still in the country of refuge, and actual repatriation still has to happen. But the assumption normally is that the applicant, who now has the physical care of the child, will return to the State of habitual residence of the child with him or her. On the other hand, where courts traditionally order "the return of the child to State X", this question aimed at finding out how far the duties of the enforcement organs go in such a case, *i.e.* in particular whether it is considered part of the "enforcement" to actually repatriate the child.

140. Some States indicated that the principal aim of enforcing a return order is to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place for the purpose of returning the child to his or her State of habitual residence.¹²⁸ A larger number described the return of the child to his or her State of habitual residence as the sole aim of enforcement.¹²⁹ More frequent, however, is a bundle of aims. Here again, some jurisdictions focus on the parties concerned and the transfer of the physical care of the child, while for others the geographical transfer of the child to the other State is decisive. For the first group, the aims of enforcement are both to remove the child from the abductor and to hand him or her over to the applicant (or

¹²⁸ Cyprus, Czech Republic, Denmark, Germany, Greece, Romania.

¹²⁹ Argentina, Canada (Alberta, Manitoba, Quebec), China (Macao), France, Italy, Mexico, New Zealand, Slovakia, South Africa, Spain, United Kingdom (England & Wales, Isle of Man, Northern Ireland, Scotland), United States of America.

others acting on behalf of, or designated by, either party).¹³⁰ For the second group, enforcement aims at handing over the child to the applicant or a person designated by him, *and* ensuring the child's return to the State of habitual residence.¹³¹ Others mention all three – removal from the abductor, handing over to the applicant, and return to the State of habitual residence – as aims of the enforcement.¹³²

141. Although the responses to this question vary, it seems that in practice the differences are rather small. There is agreement that the main aim of the 1980 Convention – and of a return order made under it – is the return of the child to his or her State of habitual residence. How the order is phrased and which enforcement measures are taken to implement it depends a lot on the circumstances. The removal of the child from the abducting parent is not the principal aim but rather an ancillary measure to ensure the actual return of the child where the abductor is unlikely to co-operate in the return, or even threatens to abscond.¹³³ The frequency with which a removal of the child from the abductor and a transfer of the physical care to the applicant is ordered, varies, however.

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

142. Several jurisdictions rely on the parties to organise the repatriation of the child: In a few States, it is the abductor who has to take care of this.¹³⁴ More frequently, it is the responsibility of the applicant to organise the repatriation of the child.¹³⁵ Even where this is not formally the case, it was stressed in some responses that it is desirable for that parent to come to the State of refuge for the decision, in order to facilitate the repatriation of the child,¹³⁶ or that it is common practice.¹³⁷ Sometimes, without being formally responsible, other actors who are close to the applicant make the practical arrangements: either the solicitor representing the applicant,¹³⁸ or the consular authorities of the State of the child's habitual residence.¹³⁹

143. But there are also other systems: In a large number of jurisdictions, courts and authorities of the requested State are responsible for organising the child's repatriation. Sometimes it is the duty of the court that ordered the return to organise the actual repatriation, if necessary assisted by others:¹⁴⁰ In Argentina, the judge will act in close co-operation with the Central Authority. Throughout the whole procedure the judge will play an active role not only in terms of adjudicating but also by performing coordination functions with other bodies, notably the Migrations Office, Central Authority, etc. He or she will try to achieve agreement between the parties.

144. In many jurisdictions the responsibility to organise repatriation must be,¹⁴¹ or may be,¹⁴² established in the terms of the return order. In Norway, section 13-14 paragraph one of the Enforcement Act indicates three alternatives for the organisation of the

¹³⁰ Austria, Bulgaria, Cyprus, Luxembourg.

¹³¹ Bahamas, Finland, Malta, Monaco, Netherlands, Sweden, Switzerland, Turkey.

¹³² Chile (here, the three aims can appear jointly or separately), Norway, Panama.

¹³³ United Kingdom (Scotland, Northern Ireland). While this happens only occasionally in Scotland, in the response from Northern Ireland it was even indicated that this was the normal course of events.

¹³⁴ Denmark (if the applicant did not come to Denmark), Netherlands, Norway (if so ordered by the court), United States of America (assisted by his / her attorney and under the supervision of the court). In the Netherlands, if the abductor does not co-operate, it is for the applicant to organise the return.

¹³⁵ Austria, Bulgaria, Canada (Quebec), China (Hong Kong), Germany, Greece, Finland, Luxembourg, Norway (if so ordered by the court), United Kingdom (Isle of Man).

¹³⁶ Denmark, France, Turkey.

¹³⁷ Mexico.

¹³⁸ Norway (if the court ordered the applicant to organise repatriation); United Kingdom (England & Wales, Scotland). It seems, however, that in England & Wales and Scotland, none of the parties is charged with this duty by law, but that it is common practice that the applicant's solicitor makes these arrangements, assisted, where necessary, by the Central Authority.

¹³⁹ Chile.

¹⁴⁰ Argentina, Spain, United Kingdom (Northern Ireland).

¹⁴¹ Norway.

¹⁴² Bahamas, Canada (Quebec), China (Hong Kong), Latvia, Lithuania, Switzerland, United States of America. In Switzerland, courts more and more often make provision in their return orders for the participation of the Swiss Central Authority.

repatriation of the child. The court can decide that the most suitable measure is for the applicant to organise the return. In that case 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. As a second alternative, the court can impose enforcement damages on the defendant / abductor for every day the return order is not complied with, thereby imposing the practical organisation on the abductor. The third option is for the repatriation of the child to be organised by the enforcement officer. In this case that officer must ensure that the necessary airline tickets have been booked before the enforcement begins. If the applicant is not coming to Norway to collect the child, the enforcement officer must organise an escort for the child with the airlines. Interestingly, Norway seems to be the only jurisdiction where there is the possibility for the repatriation to be organised by the enforcement officer.

145. In some jurisdictions, there is a joint responsibility. Sometimes the Office of the Public Prosecutor or another high-ranking judicial office within the State judicial administration plays a role: In South Africa, the organisation of the repatriation of the child is incumbent upon the Central Authority together with the State Solicitor (State Attorney). In Italy, the Public Prosecutor at the Juvenile Court that has ordered the return of the child will organise the repatriation; in Turkey, it is the Public Prosecutor acting for the Central Authority in co-operation with the applicant. In Monaco, depending on the procedural framework used, the responsibility to organise the child's repatriation can be vested in the Public Prosecutor's Office, the Guardianship Judge, or the Central Authority.

146. In Switzerland, the cantonal authorities designated by the law of the canton concerned have primary responsibility. In Georgia, there is no written rule but in practice, the Ministry of Justice of Georgia (Central Authority) and the Ministry of Internal Affairs of Georgia will be charged with the child's repatriation. In the Czech Republic, the responsibility to organise the repatriation lies with the court, the Central Authority and the applicant, in Latvia,¹⁴³ Malta and Slovakia with the requesting and requested Central Authorities, and in Chile with the requesting and requested Central Authorities and the applicant.

147. Often the Central Authority of the requested State is the organ responsible for repatriation¹⁴⁴ that has to organise the practical details and liaise, if necessary, with other bodies. The Central Authorities lend administrative assistance in numerous jurisdictions, regardless of whether the primary responsibility for the repatriation is vested in some other person or body.¹⁴⁵ Such assistance may include, for example, the co-operation with consular authorities of the State of habitual residence of the child concerning the necessary travel documents, or a notification to the customs and immigration authorities of the States concerned.¹⁴⁶

148. Other bodies mentioned in the responses, which may assist in the repatriation, include Interpol,¹⁴⁷ law enforcement agents such as the police,¹⁴⁸ social and child protection services¹⁴⁹ and the consular authorities of the requesting State.¹⁵⁰ In general,

¹⁴³ Unless indicated otherwise in the return order.

¹⁴⁴ **Canada (Manitoba, Saskatchewan), China (Macao), Cyprus, New Zealand** (the latter indicated that in some cases, legal counsel involved in the proceedings may make the practical arrangements); **Panama, Romania, United Kingdom (Montserrat, Scotland** – but see also *supra*, note 138 and the adjoining text).

¹⁴⁵ **Argentina, Canada (Manitoba, Quebec, Saskatchewan), Chile, China (Macao), Cyprus, Czech Republic, Latvia, Malta, New Zealand, Panama, Romania, Slovakia, South Africa, Switzerland, Turkey, United Kingdom (Montserrat, Scotland), United States of America.**

¹⁴⁶ **Canada (Quebec), United States of America.**

¹⁴⁷ Mentioned by **Chile**. On the role of Interpol, see further note 246 and the adjoining text.

¹⁴⁸ **Canada (Manitoba), China (Hong Kong).**

¹⁴⁹ **Bahamas, Mexico, Spain**. In **Mexico**, the *Sistema para el Desarrollo Integral de la Familia* (System for the Integral Development of the Family) will be informed of the return order by the judge and will co-ordinate the logistics of the repatriation with the Central Authority of the requesting State. This is a public body charged with the application and implementation of policies of social assistance to the vulnerable population, in particular children. It exists both at the federal and state level. In practice, however, in most cases the applicant comes and collects the child. In **Spain**, the judge may request the assistance of the child protection services of the

in some responses the importance of co-operation between authorities and of achieving agreement between the parties was highlighted.¹⁵¹

B. Actors involved in enforcement

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

149. Even where a return order has become binding upon the parties and must be complied with, this is not always done voluntarily. Question III.B.1. was intended to explore which further steps are required in such a case, in particular, whether a specific request by the applicant or anyone else is required before the enforcement organs can actually apply any coercive measures. Reference is also made to question III.B.2. (Please specify who initiates enforcement of the court's return order.) as well as to Annex III.

150. The responses given to this question referred to various different requests and requirements, some of which were already discussed above. Firstly, where States reported that a certain formality is required for an order to be enforceable (such as a *formule exécutoire*, *grosse*, *exequatur*, registration for enforcement or other), in many jurisdictions this formality is issued only upon request.¹⁵² Under question II.2. it was discussed by whom and to whom such request shall be made; see also Annex III, second column.

151. Secondly, even once an order has become enforceable (with or without the requirement just mentioned), this does not necessarily mean that public authorities will automatically apply coercive measures. As discussed under question II.2., most jurisdictions require a court decision ordering specific coercive measures before enforcement officers may apply them. Consequently, a number of responses indicated that no "further step" is required in cases where the return order already contains the order of specific coercive measures. If the measures had not yet been ordered, or the measures initially ordered turn out to be insufficient or unsuccessful, the applicant or sometimes the Central Authority or the public prosecutor will have to turn to the court for another order. This was discussed under question II.2.; Annex III (second column) indicates by whom and to whom such further request shall be made.

152. Thirdly, however, in a group of States we find another request or application that has not been discussed yet. In Bulgaria, Greece, Latvia, Lithuania and Romania, the applicant has to request the enforcement officer to enforce the order. In Austria and Turkey, a request to the enforcement officer is equally needed but here, in addition to the applicant another institution is entitled to make such request. In Austria it is the court, in Turkey the public prosecutor. Germany recently abolished the need for such request by the applicant; since 1 March 2005 the court will on its own motion ask the enforcement officer to begin enforcement. See Annex III (second column) for further details.

153. Where an application has to be made to the enforcement organ, in most of these States the latter may act directly upon such request¹⁵³ because a court authorisation for enforcement has to be sought before the enforcement officer can be requested to enforce. In Romania, however, the applicant first has to apply to the court that made the return order for a *formule exécutoire*. Subsequently the applicant may request the

autonomous region concerned if there are indications that the child is in need of protection, either because of abandonment or because of an inappropriate exercise of parental responsibilities by the abducting parent.

¹⁵⁰ **Canada (Quebec), Chile, Mexico, Panama, Spain, Switzerland.**

¹⁵¹ **Argentina, Bahamas, Finland, France, United Kingdom (Northern Ireland).**

¹⁵² See *supra*, paras. 92 *et seq.* Jurisdictions where such formality is required but will automatically be issued *ex officio* were not counted as jurisdictions requiring an additional formality under that question.

¹⁵³ **Bulgaria, Finland, Latvia and Lithuania.** In these States, however, an enforcement order from a court has to be requested by the applicant (**Bulgaria, Latvia, Lithuania**) or by the court which ordered the return (who would request a court competent for enforcement in **Finland**) *before* the applicant can apply to the enforcement organ for actual enforcement.

enforcement officer to enforce the order, but before proceeding to enforcement, the latter has to seek authorisation by a court.

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.**

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

154. From a comparison with the answers given to the previous question as well as to question II.2. it may be assumed that the answers given to this present question do not refer to who has formal authority to take the first step towards coercive enforcement but rather to who would in practice take the initiative to proceed to the implementation of the return order, including through voluntary compliance.

155. In a majority of the jurisdictions that responded to the questionnaire, it is up to the applicant (either in person or through his or her lawyer) to initiate actual enforcement.¹⁵⁴ Sometimes it is common for the applicant to act jointly with the Central Authority that either merely assists or even acts on his or her behalf,¹⁵⁵ and often both the applicant and the Central Authority may initiate enforcement.¹⁵⁶ In other States, it is the Central Authority that would take the necessary steps.¹⁵⁷

156. Less frequently it is the court that initiates enforcement.¹⁵⁸ In Austria and Spain this is one of several possibilities; in Argentina and Germany the court alone has this responsibility. In Germany, until recently it was the applicant who had to initiate enforcement, either in person, through his or her lawyer or by giving power of attorney to the Central Authority. This was changed recently in order to facilitate the implementation of return orders. Now it is an obligation of the court, but the applicant and / or the Central Authority may make suggestions to the court if no instructions have yet been given by the latter to the enforcement officer. Similarly, in Austria and Spain, the applicant or the court can instruct the enforcement officer to begin enforcement. In Austria it is however considered advisable that the lawyer requests enforcement measures in the first instance court. In Spain, the court can also proceed to enforcement

¹⁵⁴ **Austria** (applicant or court), **Bulgaria, Canada (Alberta – applicant or enforcement officer), China (Hong Kong), Denmark, Finland, Greece, Latvia, Lithuania, Romania, Switzerland, United Kingdom (England & Wales, Isle of Man, Northern Ireland), United States of America.**

¹⁵⁵ **Bahamas** (Central Authority in consultation with the Office of the Attorney-General that represents the applicant), **Canada (Saskatchewan – if the original return order contains clauses dealing with enforcement of the return order, the Central Authority would need to provide a copy of the order to any party assisting with enforcement, such as police officers; see also following note), Czech Republic** (the applicant may give power of attorney to the Central Authority or act himself), **France** (consultation between the applicant and the Central Authorities concerned). In the **United Kingdom (Scotland)**, no one party is charged with this by the law. In practice, the solicitor of the applicant makes the necessary arrangements, if necessary assisted by the Central Authority.

¹⁵⁶ **Canada (Quebec, Saskatchewan), China (Macao – in practice it is usually the Central Authority that initiates enforcement), Georgia, New Zealand** (Where the applicant's legal counsel has been appointed by the Central Authority, the Central Authority will instruct the legal counsel to take any necessary legal steps to enforce the return order. Experienced legal counsel will often initiate these steps without instruction from the Central Authority.), **Slovakia, Spain** (in practice, it is mostly the Central Authority who initiates enforcement), **Turkey.**

¹⁵⁷ **Canada (Manitoba), Chile** (Central Authority representing the applicant), **Cyprus, Malta, Monaco, Netherlands, South Africa** (Central Authority in consultation with the State solicitor).

¹⁵⁸ **Argentina, Austria** (either the court or the applicant), **Germany** (but the applicant or the Central Authority may make suggestions if the court has not yet taken action).

on its own motion if it learns about the non-compliance, the circumstances leading to the order have not changed and intervention of the court seems necessary in the child's best interest.

157. When it comes to coercive enforcement, sometimes the enforcement organ itself has some powers in starting this: In Mexico, the applicant, the Central Authority and the enforcement organ itself may initiate enforcement. In Canada (Alberta), in practice it is mostly the applicant and sometimes the enforcement organ that initiates enforcement. In Sweden, it is the applicant and / or the enforcement organ who initiate enforcement. If the police is charged with the enforcement as is normally the case, they will take all required steps, *i.a.* to contact the abductor and to collect and escort the child to the other parent in accordance with the court's decision. Moreover, in those States where the public prosecutor is controlling the enforcement of court decisions (France, Italy, Luxembourg), the latter will play a role when it comes to coercive enforcement. In France, however, it would be for the applicant to instruct the bailiff to serve the order and enforce it if the applicant brought the proceedings before the French court directly and not through the Central Authority.

158. In the responses from Canada (Quebec) and Norway, it was indicated that it would depend on the relief ordered on whom it was incumbent to initiate enforcement. In Norway, when ordering return, the court would also order whether it was for the applicant, or for the enforcement organ, or for the abducting parent to organise the child's repatriation.

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.

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).

159. In the typical child abduction case, both parents are involved – as applicant and abducting parent. Where return is ordered and the abducting parent does not comply, coercive measures will normally be taken. In these cases, the abducting parent, with whom the child still is, and sometimes his or her lawyer will be present at the actual scene of enforcement.¹⁵⁹ The Swiss Central Authority responded, however, that the presence of the abducting parent is recommended but it is not excluded that the child is delivered in his or her absence. In a particular case, *e.g.*, the children were returned to their mother by the civil court judge while the father was under interrogation by the criminal court judge for having obstructed the enforcement of the return order and having threatened to kill himself and the children. The presence of the applicant is discussed in further detail below under question III.B.3.c).

160. Moreover, in most jurisdictions, an enforcement officer will be there to actually enforce the order.¹⁶⁰ In some jurisdictions this is a specific group of professionals such as bailiffs, receivers, officers of the court, enforcement officers, etc. Sometimes they are

¹⁵⁹ Bulgaria.

¹⁶⁰ Austria, Belarus, Bulgaria, Czech Republic, Finland, Germany, Greece, Latvia, Lithuania, Norway, United Kingdom (England & Wales), United States of America.

public officials, sometimes they are self-employed.¹⁶¹ In other jurisdictions, this role is vested in the police either already by law or if ordered by the court in the particular case.¹⁶² Often the police might also intervene to assist the bailiff or other enforcement officer in case of problems.¹⁶³ Others mentioned the police without specifying its role in this respect.¹⁶⁴

161. In a number of responses, the discretion of the judge to order participation of specific actors in the application of coercive enforcement as appropriate was underlined.¹⁶⁵ Persons or institutions who may become involved in enforcement, either upon order by the judge, upon request of an organ or a person involved in the proceedings or based on the relevant legal provisions, include the Central Authority,¹⁶⁶ the public prosecutor (where the latter is not the enforcement organ himself),¹⁶⁷ the police, but also specialists such as social workers and (child or other) psychologists,¹⁶⁸ medical doctors,¹⁶⁹ guardians *ad litem* of the child, representatives of orphan (parish) courts,¹⁷⁰ commissioners or representatives of the Government,¹⁷¹ mayors¹⁷² or witnesses.¹⁷³ Depending on the legal system, the court may sometimes order this directly; sometimes it will instead order the co-operation of specific Ministries or Departments such as those in charge of social welfare, child protection, family affairs or immigration who will then send a specialist.

162. It appears that in some jurisdictions, the presence of such specialists and other participants may only take place if ordered by the court¹⁷⁴ while in others, their participation is always possible (albeit not mandatory) even in the absence of a court decision ordering such participation.¹⁷⁵ Sometimes it is for the enforcement organ to request their participation.¹⁷⁶

163. The presence of a representative of the Central Authority seems to be rather an exception.¹⁷⁷ This is understandable, given the fact that the Central Authority normally has only one office, and some of the Contracting States are rather large. In Cyprus, however, where the Central Authority is responsible for ensuring the return, it will in practice implement it with the help of the police or a social worker. In Switzerland, although the enforcement of return orders falls within the competence of the individual cantons, the (federal) Central Authority is often asked to participate in the implementation of a return order. A court may order the participation of the Central Authority, and even where this did not happen, the cantonal authorities may request

¹⁶¹ In **Bulgaria**, since 1 September 2005 the applicant may choose between public and private enforcement agents.

¹⁶² **Canada (Saskatchewan)**, **Chile** (mentioning the police (*Carabineros de Chile*) or Interpol as mandatory participants), **Netherlands**, **New Zealand**, **Panama**, **Sweden**, **Switzerland** (together with child protection authorities).

¹⁶³ **Argentina**, **Austria**, **Canada (Quebec)**, **China (Macao)**, **Cyprus**, **Finland**, **France**, **Germany**, **Italy**, **Latvia**, **Norway**, **Romania**.

¹⁶⁴ **Canada (Alberta)**, **China (Hong Kong)**, **United Kingdom (Isle of Man)**.

¹⁶⁵ **Argentina**, **Austria**, **Switzerland**, **United States of America**.

¹⁶⁶ Mentioned, e.g., by **Bulgaria** (Ministry of Justice will be a party if the Ministry presented the application), **Switzerland**.

¹⁶⁷ **Bulgaria** (involvement in proceedings on the merits is mandatory), **Netherlands**.

¹⁶⁸ See specifically on the involvement of these two professions *infra* under question III.B.3.b).

¹⁶⁹ In **Finland** and **Sweden** in some specific cases.

¹⁷⁰ **Latvia**.

¹⁷¹ **Switzerland** (some cantons).

¹⁷² **Switzerland** (some cantons).

¹⁷³ **Finland**.

¹⁷⁴ E.g. in **Mexico**, **Spain**, **United Kingdom (Northern Ireland)**.

¹⁷⁵ E.g. in **Canada (Alberta)**: if ordered by the court or requested by the applicant, **Germany** (concerning social workers), **New Zealand** (concerning social workers).

¹⁷⁶ E.g. in **Canada (Saskatchewan)**, the police, where authorised by the court to enforce the return order, will request participation of a child protection worker in order to meet child protection concerns. In **Finland** and **Romania**, the enforcement officer may request police assistance, in **Finland** moreover the presence of a witness. In **France**, **Italy** and **Luxembourg**, the Public Prosecutor (who is the organ responsible for enforcement) may order the assistance of the police or of any other institution that it deems necessary, such as the Central Authority or social workers. In **Germany**, the bailiff should, under the internal guidelines for bailiffs, ensure the participation of the youth welfare office and may request assistance by the police, if required.

¹⁷⁷ **Chile**, **Greece**, **Malta** (not mandatory but usually involved), **South Africa**, frequently also in **Switzerland**.

advice, which is given in the form of recommendations, or ask for a written confirmation of the Central Authority that it agrees to the delivery of the child to the applicant.

164. A possible presence of the judge at the actual scene of enforcement was addressed only in the response from China (Macao): There, the judge might be present if he / she considers this necessary. At a seminar for German bailiffs on the enforcement of Hague return orders and orders in matters of domestic violence in June 2006, it was suggested that the bailiff should request the judge's participation if problems appear likely to arise. This is of particular importance in legal systems where the enforcement officer may only apply the measures as detailed in the court decision.¹⁷⁸ Presence of the judge will permit to adapt the order to the situation. In a similar vein, in the response from Austria it was mentioned that the bailiff should contact the judge by phone during the enforcement situation if further instructions were required.

165. Another useful suggestion which was made at the German seminar, and which was only addressed in a single response to the questionnaire, is the possible presence of an interpreter at the scene of enforcement. While in the response from Norway, this was suggested in cases where *the child* does not speak or understand Norwegian, the focus at the German bailiffs' seminar was more on the *abducting parent*. It was considered easier to achieve compliance with the court order if it was ensured that the obligations and reasons would be fully understood by the abducting parent. This is particularly relevant in those jurisdiction where the order does not need to be served upon the abducting parent before enforcement takes place, but may be served at the time where enforcement actions are actually being taken.

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?

166. In a few jurisdictions, no social or psychological services are available in order to prepare the child and / or the abducting parent for the return and thus contribute to a de-escalation.¹⁷⁹ In an even smaller number of jurisdictions, on the other hand, the law mandatorily requires the participation of a social worker or child protection officer in coercive enforcement situations.¹⁸⁰ In Switzerland, although their presence is not mandatory, in practice it is normally the child protection authorities together with the police who will be involved in the actual enforcement. Similarly, in Malta, it is customary procedure to engage the services of a social worker to facilitate the process. The participation of a psychologist, either at the scene of enforcement or in the preparatory phase, on the other hand, is not mandatory anywhere.

167. In most jurisdictions, however, although the assistance of such services is not routinely sought in Hague return cases, it can be made available if required by the situation. The possible involvement of a social worker (or youth welfare officer) was mentioned in a large number of responses,¹⁸¹ and so was the possibility to involve a

¹⁷⁸ See *supra*, paras. 92 *et seq.*

¹⁷⁹ Georgia, Greece, United Kingdom (England & Wales, Montserrat, Scotland).

¹⁸⁰ Belarus (representative of the organ of guardianship), Finland (social worker), Lithuania (representative of the public institution for the protection of children's rights), Sweden (in cases where the police take the child into care because of an emergency, either following a court order or on their own initiative).

¹⁸¹ Austria, Bahamas, Bulgaria, Canada (Alberta, Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong, Macao), Cyprus, Czech Republic, Denmark, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Panama, Netherlands, New Zealand, Norway, Romania, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (Isle of Man, Northern Ireland), United States of America. Interestingly, in the response from Chile it was mentioned that the National Service of Minors normally intervenes in favour of the mother, regardless of whether she is the abducting or left-behind parent.

(child or other) psychologist.¹⁸² Some respondents mentioned that the possibility exists but in practice such assistance has so far never been required.¹⁸³

168. Sometimes the courts themselves have these services at hand;¹⁸⁴ sometimes it is for the judge to request their assistance or to include this into the order.¹⁸⁵ In the response from Austria it was mentioned that in difficult cases, a “task force” (including a child psychologist) at the Superior Court of Appeal (*Oberlandesgericht*) might be called in which – together with the judge – develops “tailor-made” enforcement measures. Sometimes the Public Prosecutor’s Office¹⁸⁶ or the parties¹⁸⁷ have to request the assistance of social or psychological experts. Frequently it is for the Central Authority to bring them in. In Norway and Finland, the enforcement officer will do so.¹⁸⁸

169. Some respondents specified further in which kind of cases assistance of social and / or psychological services would be made available and how. The Central Authority of Alberta (Canada) indicated that this would be the case where there would be severe psychological harm caused by the return home, excessive passage of time or breach of human rights. As to the relationship between social and psychological assistance, the Central Authority of Saskatchewan (Canada) pointed out that when asked to do so, child protection workers, who are trained social workers, can assist in taking the child into their custody temporarily, and would at that time be able to determine whether the child required psychological services, and provide them. In several other jurisdictions, including China (Hong Kong), France, Monaco and Sweden, if required by the circumstances the child could equally be placed in an institution or a foster family, and a specialised social worker could be charged with obtaining supplementary information on the recent development of the family relationship. In Spain, the judge can order the intervention of a psychologist, a social worker or the Family Meeting Point, and request them to co-operate with a view to facilitating the return of the child. He or she can ask them to report on the situation and to make proposals to the court, which is common practice in Spanish courts. The intervention of the autonomous regions is more exceptional and occurs only where the judge orders child protection measures to be taken.

170. In the responses from France, Luxembourg and Monaco, the possibility to involve the Family Mediation Service was mentioned, which could lead to a de-dramatisation, avoid a coercive solution and lead to an amicable agreement which would facilitate the dialogue within the family also in the future, *inter alia* – as highlighted by France – by reassuring the abducting parent that he or she would be able to continue exercising parental rights after the return. In France, the Ministry of Justice has established a Mission to Assist International Family Mediation in 2001 to further amicable solutions¹⁸⁹ as well as voluntary compliance with court orders given.

¹⁸² **Argentina, Austria, Canada (Alberta, Manitoba, Saskatchewan), Chile, China (Hong Kong, Macao), Czech Republic, France, Germany, Latvia, Lithuania, Luxembourg, Malta, Mexico, Norway, Panama, Romania, Slovakia, South Africa, Spain, Switzerland, United Kingdom (Isle of Man, Northern Ireland), United States of America.**

¹⁸³ **Bahamas, United Kingdom (Northern Ireland).**

¹⁸⁴ **Argentina** (all family courts have a psychologist on hand); **Panama** (the courts of first instance have these services).

¹⁸⁵ **Canada (Quebec).** The Central Authority, who ensures that the Director of Youth Protection carries out its mandate under the Youth Protection Act, will then implement such request by the court. **Chile, China (Macao), Mexico, Spain, United Kingdom (Northern Ireland), United States of America.**

¹⁸⁶ **Italy, Luxembourg.** In **Italy**, the Department “Justice of Minors” within the Ministry of Justice will intervene, through its Services of Social Assistance, upon request of the Public Prosecutor. In **Luxembourg**, the public prosecutor can, through the Public Prosecutor General who is also the Central Authority, request the help of the Central Service of Social Assistance who operates under the authority of the Public Prosecutor General and comprises psychologists and social workers. Another possibility is to request the assistance of the Service of Family Mediation.

¹⁸⁷ **Italy** (if the abducting parent desires assistance), **Lithuania.** In the response of **Slovakia**, it is stressed that such assistance is based on a voluntary recourse to it by the abductor and other persons involved.

¹⁸⁸ In a similar vein, in **Germany** the internal guidelines for bailiffs state that the bailiff shall ensure assistance by the youth welfare office if necessary. See further *supra*, para. 56.

¹⁸⁹ Although the focus of this report is coercive enforcement and not the return proceedings leading to the return order, it is worth mentioning that in Sweden, the court has the possibility to request that a representative of the social services, or another person deemed suitable, act as a mediator to try to reach a

171. Among the staff of the French Central Authority there is an educationist while the German Central Authority includes a social worker. Both, through their training and the contacts they make directly with the parties and the social services which may possibly have to intervene, try to investigate the most suitable means for favouring the return of the child in the least traumatising circumstances. In France, this can include, for example, organizing the accommodation of the applicant parent when he or she comes to collect the child, or accompanying the abducting parent who has to deliver the child or to return together with the child to the State of habitual residence. Similarly, in China (Hong Kong), the assistance rendered by the competent social worker of the Social Welfare Department can also include counselling and arrangements for financial assistance, temporary accommodation, childcare, etc. In Norway, 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. In Argentina, the judge will try to reach amicable agreement throughout the proceedings but even after a return order is made, these attempts are continued. In the response from Argentina, a case is described where an amicable agreement was reached between the parties about the practical implementation of the child's return after return had been ordered.¹⁹⁰

172. But even where all attempts to still reach an amicable solution fail, and enforcement has to be carried out by coercive measures, there are some mechanisms in place in order to support the child: In Norway, 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. Similarly, in Finland, as a mandatory rule, the enforcement officer invites a social worker to be present during the actual enforcement. However, the work of the social worker starts already before enforcement is carried out: His or her main role is to prepare the child for the return. Where necessary, the social worker invites a medical doctor or another specialist and should also call a child's relative or another person close to the child to be present, if available, with a view to reducing the risk of traumatising the child.

173. In the Netherlands, when it comes to enforcing a return order and 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. If necessary, the Child Protection Board will make appropriate arrangements in order to prepare the child and / or the abducting parent for the return. In Switzerland, there are special accompanying measures to facilitate the return of the child: A person with pedagogical and / or social training or a psychologist will be involved in the surrender if necessary. The cantonal police (*brigades des mineurs* or appropriate police corps) do moreover include trained staff, or they supplement their team on an *ad hoc* basis by children's specialists or a family psychologist. Similarly, in Monaco, if required by the circumstances, the Section of Minors and Social Protection of the administrative police division of public safety (composed of two investigators and two social assistants of the police) could be involved, as well as the social services of the Directorate of Health and Social Affairs.

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.

174. If the abducting parent refuses to return voluntarily with the child, or to let a child that is old enough to do so travel back alone to the State of habitual residence, the return order has to be enforced by coercive measures. This question aimed at exploring

voluntary solution, provided that such a measure can be presumed to result in the voluntary return of the child, without undue delay of the proceedings in court. The maximum timeframe allowed for mediation is a period of two weeks, which can only be prolonged under exceptional circumstances. Before reaching a decision, the court should procure the child's view, provided that the child has reached a suitable level of maturity.

¹⁹⁰ On the importance of trying to reach amicable solutions between the parties even after the return order is made, see also the comments by **Switzerland** under III.C.2 and III.C.4.

whether the applicant has to be present in this situation, or whether this is normally the case, even where it may not be mandatory.

175. In several jurisdictions, the presence of the applicant or a person appointed by him or her is mandatory when the return is actually implemented.¹⁹¹ In other jurisdictions, this is not generally the case.¹⁹² Sometimes the enforcement organ can request,¹⁹³ or the court can order,¹⁹⁴ the presence of the applicant if they consider this necessary in a particular case. Some mentioned that the applicant had a right to be present at the enforcement if he or she so wished.¹⁹⁵

176. In the responses, different aspects were discussed as to the usefulness of the applicant's presence at the scene of enforcement. It was often indicated that such presence at the time of the actual removal, surrender or delivery is considered desirable or advisable, either in general¹⁹⁶ or at least where very young children are concerned.¹⁹⁷ Although this last argument considers the effects on the child, the general focus seems to be on the practical aspects: It was stressed in several responses that the presence of the applicant – or a person designated by him or her – in the State of refuge will greatly facilitate the implementation of the order: the enforcement organ will then normally remove the child from the abducting parent and deliver him or her to the applicant or his representative, in order for them to actually take the child out of the country. In the response from Germany, there is an interesting nuance in this respect: While the presence of the applicant at the actual scene of enforcement / execution is not required by German law, and is very often even prohibited explicitly by the enforcement officer in order to avoid an escalation, it is required that the applicant or a person designated by him or her is present somewhere nearby, in order to receive the child from the enforcement officer once the latter has fetched the child from the abducting parent. Similarly, in the Netherlands, where the abducting parent is unwilling to return with the child, the police will collect the child. While the applicant's presence is not required at that time, he or she is however expected to subsequently come and collect the child. In the response from Austria, it was indicated that as an interim measure the child might be placed in an institution before the applicant arrives to take over the child. In Panama, the child is normally delivered to either the applicant (or a person designated by him or her) or a consular representative.

177. Others, when reporting on the need for the applicant to be present at the scene of enforcement, concentrated more on the possibly beneficial effect on the child, or the family situation as a whole: In the response from Switzerland, it was suggested that the presence of the applicant could be beneficial in cases where either the children themselves object to the return, or where there is a last chance for an amicable agreement through a resumed dialogue. Apparently, it has happened that by visualising the real situation their child is now exposed to, and faced with the other parent they often have not seen for a long time, some parents were finally able to reconsider their position, provided that experts trained to facilitate such kind of situation were present to assist with the dialogue. The reference made to mediation services in the responses from France, Luxembourg and Monaco as well as the appeal to the enforcement officers in Norway to try to reach amicable agreement even at this late stage have to be seen in the same light. In France, where three children had already been removed from the

¹⁹¹ Argentina, Bahamas, Bulgaria, Canada (Quebec), Chile, China (Hong Kong), Czech Republic, Lithuania.

¹⁹² Austria, Canada (Alberta, Saskatchewan), China (Macao), Cyprus, Denmark, Finland, France, Georgia, Greece, Italy, Latvia, Malta, Monaco, New Zealand, Norway, Panama, Romania, Slovakia, South Africa, Sweden, Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat). In Panama, however, if the applicant or a representative is not present at the moment when the child is fetched, the presence of a consular representative is required.

¹⁹³ Finland.

¹⁹⁴ Luxembourg. In Canada (Manitoba) and New Zealand, the presence of the applicant at the scene of enforcement is only required where the order specifies that the child has to be handed over to the applicant.

¹⁹⁵ China (Macao), Latvia, Turkey.

¹⁹⁶ Canada (Alberta, Saskatchewan), France, Greece, Italy, Mexico, Romania, Sweden, United Kingdom (England & Wales, Northern Ireland).

¹⁹⁷ Austria, Cyprus.

abducting parent and had been provisionally placed in an institution until their mother could come and collect them, a meeting between the parents was organised by the social workers of the institution, which led to the drawing up of a protocol in which the mother undertook to respect the family ties between the children and their father. The content of this protocol was shared with the children before they returned to their State of habitual residence the same night.

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)?

178. Article 12 of the Convention obliges the authority concerned to order the return of the child, and Article 7 c) and h) oblige the Central Authorities to secure the voluntary return or to bring about an amicable resolution, and to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child. With this question it was intended to explore which mechanisms are in place with a view to ensuring the actual return of the child after such return has been ordered, in particular whether anyone oversees the enforcement procedure and checks whether the child is eventually returned to his or her State of habitual residence.

179. In several responses it was stated that no such supervision of the enforcement procedure exists in the jurisdiction concerned.¹⁹⁸ Other legal systems do however know some supervision or monitoring of the implementation and, if necessary, coercive enforcement of the order. Sometimes it is the court that ordered return which supervises the enforcement procedure,¹⁹⁹ or a specific enforcement court.²⁰⁰ In several jurisdictions the Central Authority is responsible for supervising or monitoring the enforcement of the return, either alone²⁰¹ or together with a court.²⁰² In doing so, the Central Authority will liaise with other actors involved such as legal counsel, courts, the requesting Central Authority, the police and other competent authorities.²⁰³ If problems occur, however, the Central Authority normally has to turn to the court for the latter to order further measures.²⁰⁴

180. Where the Central Authority and / or courts are involved, several respondents mentioned that there is no supervision in the formal sense but that the ultimate responsibility for achieving the return of the child is vested in the said institutions. This is illustrated, e.g., by the response from Scotland: The details of how the return is to take place will normally be incorporated in the court's order, but it does not exercise any further supervision, although there is a check by both the Central Authority and the court after the event that return has occurred. A further hearing is normally set to see if the order has been complied with and the child has returned. Often this case does not call as clerks of the court make enquiries and inform the judge. The Central Authority will assist with the mechanics of return where required, but does not supervise.

¹⁹⁸ **Canada (Alberta), Denmark, Greece, Norway, United Kingdom (England & Wales).**

¹⁹⁹ **Argentina, Austria, Czech Republic (first instance), Panama (first instance), Romania, Slovakia (first instance), Spain, Switzerland (in some cantons), United Kingdom (Isle of Man, Northern Ireland), United States of America.**

²⁰⁰ **Switzerland (in some cantons), Turkey.**

²⁰¹ **Canada (Manitoba, Quebec, Saskatchewan), China (Macao), Cyprus, Georgia, Malta, Monaco, Netherlands, New Zealand, South Africa, Sweden** (but see also below for the role of the police, the applicant and the court), **United Kingdom (Montserrat).** In the Bahamas, the Attorney General's office, to which the Central Authority refers supervises enforcement.

²⁰² **Chile, Mexico** (court of first instance and Central Authority), **Romania.** In **Mexico**, moreover, the Presidency of the *Tribunal Superior de Justicia* of each state supervises the work of the courts of first instance.

²⁰³ **New Zealand.**

²⁰⁴ **Bahamas** (for contempt proceedings), **Canada (Manitoba, Saskatchewan** – for any order as appropriate), **Cyprus** (for contempt proceedings), **Romania** (Central Authority has to request the court to serve the writ of execution upon the fiscal authorities in order to enforce the fine which has to be ordered together with the return for the case of non-compliance). See also question II.2.a) on whether coercive measures have to be ordered by a court.

181. In the Bahamas and the United Kingdom (Montserrat), it is the Attorney General's Office (which in Montserrat also acts as Central Authority), in Italy the Public Prosecutor at the Juvenile Court and in France the Public Prosecutor²⁰⁵ who supervises enforcement. Likewise, in Luxembourg the Public Prosecutor initiates enforcement. Given the fact that the Public Prosecutor General is the Central Authority in Luxembourg, the latter may intervene at any stage of the enforcement through instructions or directives addressed to the public prosecutor. In Sweden, although the Central Authority has a supervisory role and confirms the return of the child to the receiving Central Authority, in practice the police would be strongly involved: Normally the court will decide that the child should be returned through the assistance of the police authority. In such a case the entire procedure is handed over to the police, thus including the supervision of the enforcement of the decision. Alternatively, the court could decide that the abductor should hand the child over to the applicant, under penalty of a fine. If the abductor does not comply with the court's decision, the applicant has the possibility of informing the court. The court would then impose the fine and once again order the surrender, either by imposing a higher amount of penalty of a fine or by ordering assistance by the police.

182. In a few responses it was indicated that there is no authority formally overseeing the actual enforcement but that the enforcement organ (the bailiff) is acting independently. In this context, some legal remedies against acts of the enforcement organ were described which have been discussed in more detail above under question II.4.²⁰⁶

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?

183. It seems that in most jurisdictions that responded to this question and where it is the court of first instance that has a role in enforcement, this would not change where return was only ordered by the Court of Appeal.²⁰⁷ In other words, the court of first instance (which initially refused to return the child) would have to enforce the return order made by the superior instance. In other jurisdictions, it would be the superior instance that ordered return which would be responsible for enforcement.²⁰⁸ In Germany, until 18 February 2005 the court of first instance was in charge of enforcement, also where return had been ordered only by the Court of Appeals. Since 1 March 2005, it is the last court which took a return decision on the merits that has to enforce the order.

²⁰⁵ In co-ordination with the Central Authority.

²⁰⁶ **Bulgaria:** A bailiff's decisions may be appealed to the local district court but this does not suspend enforcement unless otherwise ordered by the court. The court's decision is binding upon the bailiff; if he or she does not comply with it parties have to file another complaint. The bailiff is also subject to disciplinary procedures. See further above under II.4. **Finland:** A bailiff's decisions may be appealed to the local district court but this does not suspend enforcement unless otherwise ordered by the court. Furthermore, a complaint to the Ministry of Justice, to the Chancellor of Justice or to the Parliamentary Ombudsman is possible. **Latvia:** The district court in whose district the bailiff acts oversees the bailiff's work at a general level. This involves a control of the books and files once a year. In concrete cases, a bailiff's decisions may be appealed to the local district court. The Council of Latvian Sworn Bailiff has disciplinary supervision, to be exercised upon proposal of a judge or prosecutor, pursuant to a complaint of a person or on its own initiative. **Lithuania:** The district court in whose district the bailiff acts oversees the bailiff's work; further the Ministry of Justice and the Bailiffs Chamber. The court may issue binding instructions on the bailiff to eliminate procedural violations; no appeal is possible for the bailiff.

²⁰⁷ **Argentina, Austria, Chile, Czech Republic, Mexico, Panama, Romania, Slovakia, Spain, Switzerland** (Federal Court, some cantons), **United Kingdom (England & Wales, Northern Ireland** – In the latter response it was stated that no such case had yet occurred but that it was likely that the Appellate Court would hand back the matter of enforcement of its order to the lower court.) where the court oversees enforcement. Similarly, in the **Bahamas, Canada (Saskatchewan) and Denmark**, the court of first instance (which does not "oversee" enforcement) would be the one to order coercive measures in case of non-compliance with an order made by the Court of Appeal.

²⁰⁸ **Switzerland** (some cantons), **United Kingdom (Isle of Man), United States of America** where the court oversees enforcement. Similarly, in **Malta and Sweden**, where the courts do not oversee enforcement, it would be for the Court of Appeal to order coercive measures in case of non-compliance with its order.

184. In Italy, only one appeal to the *Corte di Cassazione* (the Supreme Court) is possible against a Hague return order. This court only has the power to quash decisions, not to render decisions on the merits. So in case of a successful appeal against the refusal to return the child, the case would be referred back to the court of first instance for a new decision. Responsibility for enforcement would remain with the Public Prosecutor at the Juvenile Court.

185. In some jurisdictions where the court has no role in overseeing enforcement, some responsibility would nevertheless be shifted to a different organ in case the Court of Appeals is the first to order enforcement: In Canada (Manitoba), the Central Authority would have to turn to the Court of Appeal for enforcement measures in such case. In France and Luxembourg, where the Public Prosecutor is responsible for the enforcement of first instance return orders, this would in Luxembourg shift to the Public Prosecutor General (*i.e.* to the Central Authority) and in France to the Public Prosecutor General at the Court of Appeal where a return order handed down by the Court of Appeal would have to be enforced.

C. The enforcement procedure proper

- 1. Is there a timeline for enforcement?**
- 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?**

186. The two questions above are closely related: The question about a timeline for enforcement can refer to the earliest possible moment to apply coercive measures as well as to the latest (thus touching upon a possible limitation period to enforce the order). Where a period of time is granted to the abducting parent for voluntary compliance, either because such period is mandatory or because the court exercised its discretion to this effect, this necessarily has an impact on the earliest possible moment to apply coercive measures. Therefore, the answers given to question III.C.2. will be discussed first, followed by a discussion of the additional aspects of the time issue as mentioned in the responses to question III.C.1.

Practice regarding time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made

187. Some simply responded that such time would normally be allowed.²⁰⁹ In a few jurisdictions, the law establishes a period for voluntary compliance with a court decision before coercive measures may be applied.²¹⁰ In Norway, if the defendant agrees to comply voluntarily with the return order, he or she is given two weeks (Norwegian Enforcement Act § 13-6). This is because it is considered to be in the best interest of the child for the repatriation to be arranged in an amicable way – even where the court has decided that the enforcement officer shall organise the repatriation. If the latter has reason to believe that the defendant will comply with the return order, the enforcement procedure can be deferred by a few days. Sometimes, other requirements add to the time established by law: In Bulgaria, Latvia and Lithuania, a bailiff who has received an enforceable court order first has to notify the defendant of this within a certain period following receipt²¹¹ and invite him or her to comply with the decision by a certain

²⁰⁹ **Bahamas, Canada (Alberta), Finland, Netherlands, Turkey. Panama** responded that normally, 2 weeks to a month are granted but no longer.

²¹⁰ Time given for voluntary compliance: **Georgia**: 5 days; **Slovakia**: 3 days unless ordered otherwise.

²¹¹ **Lithuania**: The bailiff has to verify within three days (and in urgent cases immediately) that there are no manifest hindrances to accept the enforcement order and begin enforcement. After acceptance, (s)he has to notify the defendant (i) in urgent cases not later than on the day following the acceptance of an executory document; (ii) in other cases not later than within 5 days of the acceptance (Article 653 of the Code of Civil Procedure).

deadline.²¹² The notice contains a warning that in case of non-compliance upon the expiry of that time, coercive measures will be applied.

188. In some legal systems, the order will normally establish a timeframe including the necessary time to make the required practical arrangements and a time limit for voluntary compliance.²¹³ In the responses from two United Kingdom jurisdictions (Northern Ireland and Scotland), this was explained in further detail: The court order will normally specify a date by which the child or children are to be returned. This date is normally reached after consultation with the parties' solicitors prior to a full hearing before the court. Once a decision is made to return the child, parties are given an opportunity to negotiate the terms. These need to be approved by the court in making the return order. If no agreement is reached between the parties, the court in making the return order would set out full details regarding the child's return.

189. In other jurisdictions the return order only occasionally allows a period for voluntary compliance and / or practical arrangements.²¹⁴ Others responded that there is no general rule and this will very much depend on the circumstances of the case.²¹⁵ Examples include cases where return at the end of a holiday period is ordered²¹⁶ or where there are indications for voluntary compliance.²¹⁷ In the response from Switzerland, it was explained that the order normally fixes a period of 3-7 days at the most for voluntary compliance. However, in exceptional cases, e.g. where the return will occur after the child has spent a long time outside the State where he or she was habitually resident before the unlawful removal, the preparations preceding the return might require a longer time, in particular in order to allow for the exploration of appropriate arrangements taking into account the child's best interest.

190. In another group of jurisdictions, it is not common to grant a period for voluntary compliance.²¹⁸ In Italy, such period would only be granted upon request by the abducting parent and only if the applicant agrees. Others are unlikely to grant it at all. The Czech Republic reported bad experience with abductors who declare to be ready to return the child within a concrete time limit and then refuse to do so. In the responses from Canada (Saskatchewan) and Spain it was mentioned that attempts to reach a voluntary return are normally made during the proceedings prior to the order; therefore if those attempts do not succeed there is felt to be no need to grant additional time in the hope of voluntary compliance. Others mentioned, however, that even at this stage the enforcement organs should try to achieve voluntary compliance and an amicable solution because this serves the best interests of the child.²¹⁹ The Swiss response goes even further: In Switzerland, cantonal enforcement authorities are more and more reluctant to take the child without at least some agreement of the abducting parent. The tendency goes towards searching for a last-minute agreement or specific arrangements serving the best interests of the child (post-decision mediation). It is further mentioned that the publicity and the role of the media (which are normally not aware of the full picture of

²¹² **Bulgaria:** within 7 days; **Latvia:** within 10 days. If the adjudication is to be executed without delay, a time period for voluntary execution of not less than three days shall be set (Article 555 of the Civil Procedure law). **Lithuania:** period set by the bailiff. If the debtor fails to comply with the decision within the established period, not later than within 10 days after the deadline the bailiff shall start enforcement (Article 624 of the Code of Civil Procedure).

²¹³ **Argentina, Bahamas, Canada (Manitoba), China (Hong Kong – unless non-compliance is to be expected, Macao), Malta, New Zealand, Romania, South Africa, Switzerland (3-7 days at the most), United Kingdom (England & Wales).** In **Romania**, the duty to establish such a timeframe in the order was introduced by new implementing legislation in 2004. Moreover, return now has to be ordered under the penalty of a fine between 5 and 25 million ROL for the case of non-compliance. The previous legislation did not provide for any of this; in the past, coercive measures were initiated if the order was not complied with "within a reasonable time".

²¹⁴ **Canada (Quebec):** Normally, immediate return is ordered; occasionally a short period (almost always shorter than 15 days) is granted for practical arrangements.

²¹⁵ **Argentina, Bahamas, Canada (Manitoba), Chile, Denmark, Greece, Mexico, United Kingdom (Isle of Man), United States of America.**

²¹⁶ **France.**

²¹⁷ **Cyprus (2-3 days at the most), Germany.**

²¹⁸ **Austria, Canada (Saskatchewan), Czech Republic, Spain.**

²¹⁹ **Luxembourg (nevertheless, it is not common to grant a period for voluntary compliance), Norway (see *supra*, paras. 171, 187), Switzerland.**

the case because of the confidentiality of the files) often do not facilitate the return of the child.²²⁰

Timeline for enforcement

191. Several jurisdictions responded that there is no timeframe for enforcement.²²¹ Referring to the earliest moment to apply coercive measures, some of them underlined, however, that Hague return proceedings always contain an element of urgency, and that enforcement through coercive measures, where it is necessary, could start immediately.²²² Nevertheless, in many jurisdictions such timeframe will normally be set out in the order itself.²²³

192. In the Netherlands, the Central Authority will determine a reasonable period in accordance with the circumstances of the specific case if the court did not specify the timeframe in the order.²²⁴ In Spain, should the details of restitution, including the envisaged timeframe, not have been specified in the return order, the applicant would have to go back to the court and obtain those specifications before coercive measures can be applied.

193. In a few jurisdictions, the law contains some guidelines.²²⁵ For those legal systems, reference is made to their response to the previous question because they normally leave a short period for voluntary compliance with the order before coercive measures may be applied.

194. As concerns a possible end of the period during which a return order can be enforced, in Romania prescription of enforceability would apply after three years. In Panama, the Central Authority would turn to the court if it found that a long time has passed since the order was made, without the applicant having taken any measures to collect the child. The court might then fix a deadline or revoke the order immediately. In the response from Germany it was pointed out that undue delay might affect the proportionality of the order, and make its enforcement unreasonable or disproportionate.

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.

195. A few responses indicated that no measures were available to prevent the abductor from absconding with the child.²²⁶

196. Several other respondents, however, mentioned specific measures that can be taken in their respective jurisdictions, such as the deposit of passports or other travel documents with the court (or with the applicant's solicitor²²⁷),²²⁸ reporting conditions,²²⁹

²²⁰ On the role of mediation in general in relation to the enforcement of Hague return orders, see also under III.B.3.b).

²²¹ Argentina, Austria, Chile, China (Hong Kong), Cyprus, France, Germany, Greece, Italy, Luxembourg, Malta, Mexico, Monaco, New Zealand, Slovakia, Turkey, United Kingdom (England & Wales).

²²² Austria, Canada (Alberta – unless determined otherwise in the order), China (Hong Kong), Cyprus, Denmark (unless determined otherwise in the order), Finland, Germany, Italy, Monaco, New Zealand, Norway, Turkey, United Kingdom (England & Wales, Scotland).

²²³ Canada (Manitoba, Quebec, Saskatchewan), China (Macao), Netherlands, South Africa, Spain, Sweden, Switzerland, United Kingdom (Isle of Man, Northern Ireland, Scotland), United States of America.

²²⁴ Netherlands.

²²⁵ Bulgaria, Georgia, Lithuania.

²²⁶ Chile, Cyprus, Czech Republic, Norway, Romania, Slovakia.

²²⁷ United Kingdom (Northern Ireland, Scotland). It has to be kept in mind, however, that there are regions where no passport is required for cross-border travel such as within the United Kingdom, within Scandinavia or within the Schengen Area of the European Union.

²²⁸ Argentina, Canada (Alberta), Germany, New Zealand, South Africa, Spain, Switzerland, Turkey, United Kingdom (England & Wales), United States of America. This sometimes covers only travel documents of the child, sometimes also documents of a person likely to take the child out of the country.

²²⁹ Canada (Alberta), Germany, Panama, Switzerland.

perhaps coupled with restrictions on the abducting parent's freedom of movement such as the obligation to reside in a certain place.²³⁰ It was also stated that the court could order the abducting parent to pay a bond or deposit²³¹ or to bring the child to a certain place under the penalty of a fine or detention, or that the police would fetch him or her in case this was not complied with.²³² Further options are court decisions ordering a prohibition for the child to be taken out of the jurisdiction, combined with border alerts,²³³ and the temporary placement of the child under the protection of the child protection authorities, e.g. in an institution or a foster family,²³⁴ with the applicant²³⁵ or with a relative of one of the parents²³⁶ or any other specified person or in any other way that the court or competent authority finds suitable.²³⁷ Contact with the abducting parent might be excluded or supervised in such a situation.²³⁸ In this context, some added that the child could be uplifted by the police and delivered into the safe placement in such a case.²³⁹

197. In the responses from Bulgaria, China (Hong Kong), Mexico and Spain it was underlined that the most effective enforcement measure is prevention. In these jurisdictions, such measures can be taken from the moment that Hague return proceedings are brought, pending these proceedings and also after the return is ordered but has not yet been implemented. They may include any measure necessary to protect the child and should be considered where there is an indication that the abductor would be unlikely to comply with a return order. In China (Hong Kong), a prohibition to remove the child out of jurisdiction is indeed regularly ordered pending return proceedings, and it usually remains in force until the return order is executed. Austria, without referring to any particular measures, stated that quick action would prevent the hiding; the abductor should not be informed in advance that specific enforcement measures were envisaged at a certain date.

198. In most cases mentioned above, a court order is required.²⁴⁰ The question did not address whether such measures could be ordered *ex officio* or only upon request (and if so, by whom), so the responses in most cases did not touch upon this issue. It can be noted, however, that both systems exist.

199. Some respondents mentioned, moreover, that non-compliance with a return order is an offence (under varying headings) in their respective jurisdictions,²⁴¹ which might lead to the arrest of the abducting parent.

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

²³⁰ Germany.

²³¹ New Zealand, Spain.

²³² Finland, Panama.

²³³ Argentina, Bahamas, Canada (Alberta), China (Hong Kong), Germany, Greece, Malta, New Zealand, Panama, Spain, Switzerland, Turkey, United Kingdom (Northern Ireland). But see also the judgment of the ECtHR in the case of *Bianchi v. Switzerland* 2006 (*supra*, note 33). There the Court seems to consider such an order to amount to an unnecessary prolongation of the stay of the child in the State to which he or she has been abducted, which contributed to the violation of the left-behind parent's right to respect for his family life.

²³⁴ Argentina, Belarus, Bulgaria, Canada (Manitoba), Chile, Finland, France (only in exceptional cases where the child is actually in danger), Georgia, Italy, Luxembourg, Mexico, Netherlands, Spain, Sweden, Switzerland (as last resort), United States of America.

²³⁵ Denmark.

²³⁶ Canada (Saskatchewan).

²³⁷ Belarus, Canada (Quebec, Saskatchewan), China (Hong Kong), Denmark, New Zealand, Sweden, United Kingdom (Isle of Man).

²³⁸ China (Hong Kong), United Kingdom (Isle of Man).

²³⁹ Canada (Saskatchewan), New Zealand.

²⁴⁰ In Bulgaria, if necessary, child protection authorities can order the provisional accommodation of the child in protective care until a court order is made. In Sweden, in cases where enforcement of the decision is presumed to be obstructed, the police have the authority to take the child into custody immediately, without detriment to the child, if the urgency of the situation so requires, given that a decision by the court cannot be awaited. The court then has to decide without delay whether the child should remain in custody.

²⁴¹ Monaco, New Zealand, Slovakia.

can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?

200. Normally, the Central Authority will become involved in a co-ordinating function.²⁴² In some jurisdictions, although the public prosecutor is not the Central Authority, he would be involved in locating the child.²⁴³ In the United Kingdom (England & Wales, Scotland), it would primarily be for officers of the court (in England the Tipstaff) to search for the child.²⁴⁴

201. In most jurisdictions, however, the police will be requested to do so.²⁴⁵ Some mentioned specific police forces such as Interpol²⁴⁶ or the FBI²⁴⁷ or referred to the possible involvement of other law enforcement authorities.²⁴⁸ The customary techniques for locating missing persons will then be applied.²⁴⁹ *E.g.* in Switzerland, the child will be entered into an electronic search system of the police (RIPOL). Luxembourg responded that a description of the child could be issued to all police stations. In Lithuania, data contained in State registers and in State or municipal information systems, operational measures and methods, mass media and other possibilities can be used. In Scotland, it may be possible to use the abducting parent's employment or social security records to trace the child. Argentina gave an example where the courts had also involved the media: A girl had been abducted from Brazil to Argentina, and her return had been ordered. Father and child travelled around Brazil, living in a lorry, and could not be found. The court ordered to publish their photographs in the newspapers and informed both the police and Interpol of the search. Directed by an anonymous call, the police were able to track them down, and the acting judge ordered the police to uplift the girl. She was taken to the court where a team comprising a psychologist and a social worker could attend to her, in the presence of a court officer. All this happened during a weekend.

202. For the police to become involved, sometimes the court would order or request the police to locate the child.²⁵⁰ In other jurisdictions the public prosecutor,²⁵¹ the enforcement organ (bailiff)²⁵² or the Central Authority have authority to request the police to do so.²⁵³ Sometimes it is for the applicant or his or her legal representative to request certain measures.²⁵⁴

203. Reference was also made to other authorities: If necessary, border authorities would be alerted.²⁵⁵ In one response it was mentioned that the Central Authority would

²⁴² Austria, Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), Cyprus, Finland, Greece, Malta, Netherlands, New Zealand, Norway, Romania, South Africa, Sweden, Switzerland, Turkey, United Kingdom (Scotland), United States of America.

²⁴³ Canada (Alberta), France, Greece, Italy, Luxembourg, Malta, Mexico, Monaco, Netherlands, Romania, Slovakia, Turkey.

²⁴⁴ Interestingly, in the response from Scotland it was stated that "it may also be possible to involve the police, for instance if a criminal offence has been committed". So police involvement does not seem to be part of the "standard procedure".

²⁴⁵ Argentina, Austria, Bahamas, Bulgaria, Canada (Alberta, Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong, Macao), Cyprus, Czech Republic, Denmark, Finland, France, Georgia (through the Ministry of Internal Affairs), Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, New Zealand, Norway, Panama, Romania, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (Isle of Man, Northern Ireland), United States of America.

²⁴⁶ Mentioned by Argentina, Chile, Italy, Latvia, Lithuania and Sweden. Italy, Lithuania and Sweden specified that Interpol would only be involved where it was thought that the child had been removed to another country.

²⁴⁷ United States of America.

²⁴⁸ Canada (Manitoba), Latvia, United States of America.

²⁴⁹ Bulgaria, France, Lithuania, Luxembourg, Malta, Monaco, New Zealand.

²⁵⁰ Argentina, Austria, Denmark, United Kingdom (Isle of Man, Northern Ireland).

²⁵¹ Canada (Alberta), France, Italy, Panama, Turkey.

²⁵² Finland, Latvia, Lithuania.

²⁵³ Austria, Bahamas, Canada (Saskatchewan), Finland, Romania, Turkey. In the Netherlands, the Central Authority would turn to the public prosecutor who would then involve the police.

²⁵⁴ *E.g.* in the response from New Zealand, it was mentioned that the applicant's legal counsel may apply to the court for a warrant for the child to be uplifted and placed in the care of, or delivered to, a specified person. In Scotland, the applicant's solicitors would have to involve the officers of the court to search for the child.

²⁵⁵ Argentina, Canada (Quebec), Latvia, Lithuania, Switzerland.

contact the passport office regarding the issuance of travel documents for the child.²⁵⁶ In Spain, the *Ministerio Fiscal*²⁵⁷ would be involved. In some jurisdictions, social or child protection authorities might be activated.²⁵⁸ In the United States of America, the missing children clearinghouse in every state will assist in locating children when information arises that a child may be in that state. Canada (Alberta) and China (Hong Kong) mentioned that the parties could be referred to private investigators.

204. Moreover, in several jurisdictions, child abduction or the non-compliance with a return order is a criminal offence that comes under various different headings.²⁵⁹ If law enforcement authorities investigate the matter as a possible criminal offence, all of the usual investigatory powers of the police will come into play.²⁶⁰ *E.g.* an arrest warrant can be issued against the abducting parent to facilitate the police search.²⁶¹ In common law jurisdictions, if the abductor is in contempt of court, a warrant of arrest can also be issued.²⁶² Some referred to the coercive measures that can be applied in the case of non-compliance with a return order.²⁶³

205. As to the possible effect on the enforcement of the return order, some replied that if the abducting parent absconds with the child this will have no effect on the enforcement proceedings, even if this lasts for a long time.²⁶⁴ In Germany, this is in principle also the case. However, if the period is very long, this may amount to a considerable change of circumstances and it can become disproportionate and incompatible with the child's best interest to still enforce the order and return the child to the applicant.

206. Switzerland responded that the abducting parent is more or less the master of this phase. He or she can obstruct enforcement by absconding with the child, by manipulating public opinion, by starting a hunger strike or taking other measures to express refusal. Cantonal enforcement authorities are therefore more and more reluctant to take the child without at least "partial agreement" of the abducting parent. The tendency goes towards searching for a last-minute agreement or specific arrangements serving the best interests of the child (post-decision mediation). It is further mentioned that the publicity and the role of the media (which are normally not aware of the full picture of the case because of the confidentiality of the files) often do not facilitate the return of the child.²⁶⁵

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)?

207. The responses to this question have been incorporated into the discussion of responses given to question III.B.1. and 2. (see above on page 44 *et seq.*).

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?

²⁵⁶ Canada (Quebec).

²⁵⁷ On the *Ministerio Fiscal*, see *supra*, para. 112.

²⁵⁸ New Zealand, Norway, United Kingdom (Isle of Man, Northern Ireland).

²⁵⁹ See *supra*, paras. 35, 38 *et seq.*

²⁶⁰ Argentina, Canada, China (Macao), France, Georgia, Greece, Luxembourg, Malta, Monaco, New Zealand, Romania, Slovakia, Spain, Sweden, Switzerland. In Turkey, the abducting parent can be prosecuted under article 341 of the Enforcement and Bankruptcy Law. See also *supra*, note 12, and *infra*, para. 212.

²⁶¹ Canada, Monaco. In Canada (Quebec), this may not be necessary if the return order already orders the police to ensure enforcement.

²⁶² Bahamas, Canada (Alberta, Manitoba, Quebec, Saskatchewan), China (Hong Kong), Cyprus, South Africa, United Kingdom (Isle of Man, Northern Ireland, Scotland) and United States of America.

²⁶³ Bulgaria (fine), Finland. See in more detail *infra* under question III.C.6.

²⁶⁴ Cyprus, United States of America.

²⁶⁵ On the role of mediation in general in relation to the enforcement of Hague return orders, see also under III.B.3.b).

208. The coercive measures available in the various legal systems in order to achieve compliance with a civil court order come under different names, and different procedures may be required to order and apply them, but the actual range of measures is limited in numbers and similar – at least in terms of black-letter law – in the different jurisdictions. The most common measures are pecuniary fines, imprisonment of the abductor and the exercise of physical force.

209. Pecuniary fines exist in numerous legal systems.²⁶⁶ While in most cases, they have to be paid to the State, in some legal systems they are paid to the applicant.²⁶⁷ In China (Hong Kong), in addition to or instead of imposing a fine, the court may equally direct a sequestrator to take possession of the real and personal property of the defendant to compel his / her compliance with the return order. These possessions will be withheld “until contempt is purged”.

210. The possibility of imprisonment of the abductor equally exists in a number of legal systems.²⁶⁸ In addition, some responses, without explicitly mentioning fines and / or imprisonment, referred to contempt proceedings.²⁶⁹ These may generally lead to the imposition of a fine or imprisonment. Moreover, some respondents indicated that the court may take any appropriate measure to achieve the enforcement of the return order.²⁷⁰ The order of a search warrant specifically was mentioned by some.²⁷¹ Reference was also made to the measures discussed under question III.C.3 which may be taken to prevent the abductor from absconding with the child.

211. Several jurisdictions provide for “physical force” to be exercised by the enforcement officer, the police or any other person or body in charge of enforcing the return order. “Physical force”, as violent as it may sound, does not as such mean “violence”; normally it simply means that those persons or bodies are authorised to physically touch and remove the child from the abducting parent and hand him or her over to someone to take care of the child (often to the applicant).²⁷² Some others, without explicitly mentioning physical force, responded that police assistance could be requested for enforcing the return order,²⁷³ which might amount to the same. In some jurisdictions, the use of physical force is limited in that it may be used against the abductor and sometimes against named other parties with whom the child might be, but not against the child.²⁷⁴ Greece responded explicitly that the use of physical force is not permitted at all; this State would have to rely on the tools putting pressure on the abducting parent to eventually comply with the order.²⁷⁵ In this context it is interesting to note that the

²⁶⁶ Argentina, Austria, Bulgaria, Canada (Manitoba, Quebec, Saskatchewan), China (Hong Kong), Czech Republic, Denmark, Finland, France (*astreinte*), Germany, Greece, Latvia, Lithuania, Luxembourg (*astreinte*), Mexico, Netherlands, New Zealand, Norway, Romania, Slovakia, Sweden, Switzerland, United Kingdom (Scotland), United States of America.

²⁶⁷ The latter is true, e.g., for the *astreinte* in France and Luxembourg.

²⁶⁸ Austria, Bahamas, Canada (Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong), Germany, Greece, Malta, Mexico, Netherlands, New Zealand, Switzerland, United Kingdom (Isle of Man, Northern Ireland, Scotland), United States of America.

²⁶⁹ Bahamas, Canada (Alberta), Cyprus, South Africa, United Kingdom (Isle of Man, Northern Ireland).

²⁷⁰ Canada, China (Hong Kong, Macao), United States of America.

²⁷¹ Argentina, Canada (Saskatchewan). In New Zealand, a person executing a warrant to uplift a child for the purposes of enforcing a return order or contact order has standard powers to use force to gain entry to buildings or vehicles.

²⁷² This was mentioned, e.g., by Austria, Canada (Manitoba, Saskatchewan), China (Hong Kong), Czech Republic, Denmark, Finland, Germany, Luxembourg, Malta, New Zealand, Norway, Panama, Romania, Slovakia, Sweden and Turkey.

²⁷³ Argentina, Bahamas, Canada (Alberta), Chile, Cyprus, France (court can order that the applicant be accompanied by police officers of the criminal investigation department (*officiers de police judiciaire*) to collect the child, or the public prosecutor can request the assistance other police forces (police or *gendarmerie*)), Italy, Latvia, Monaco, Netherlands, Switzerland, United States of America.

²⁷⁴ Czech Republic, Denmark, Finland. In Germany, physical force may be directed against anyone including the child for the enforcement of a return order; for the enforcement of a contact order, however, such force may not be directed against the child. See also the decision of the European Court of Human Rights in the case of *Ignaccolo-Zenide v. Romania* (*supra*, note 26), para. 106, where the use of force against the child was explicitly labelled as undesirable, though not completely excluded.

²⁷⁵ Greece. In a case pending between Greece and Austria in 2006, the Greek authorities consequently informed the Austrian Central Authority that the implementation of the removal of the child from the abductor

European Court of Human Rights, in the case of *Ignaccolo-Zenide v. Romania*,²⁷⁶ stated that the possibility for the applicant to request the imposition of a fine on the abductor, or to institute criminal proceedings, are insufficient means of enforcement because they are “indirect and exceptional” means of coercive enforcement.²⁷⁷ Their existence, and the need for the applicant to take steps, can not release the requested State of its obligation to take all steps that can reasonably be expected in order to achieve the enforcement of the return order and thus the reunification of the left-behind parent with his or her child.²⁷⁸

212. All the measures mentioned above are normally taken in the course of civil court proceedings. Furthermore, in a number of responses, reference was made to criminal proceedings that could be started, most often for child abduction or for non-compliance with a court order.²⁷⁹

213. While the range of measures available appears to be rather similar in theory in the jurisdictions examined, there are differences in the combinations which are available, and even greater differences as concerns the frequency with which the various measures of coercion are used in practice. Some mentioned that none of the measures had ever been necessary,²⁸⁰ or that enforcement in general is not a problem.²⁸¹ Others stated that the imposition of a fine – the most widespread measure in the laws of those jurisdictions that responded to the questionnaire – is unusual.²⁸² In some jurisdictions, detention of the abducting parent is normally not ordered.²⁸³ The use of physical force shows the widest range of variations: it is sometimes the common tool that is applied in the first place²⁸⁴ while in other jurisdictions it is the last resort²⁸⁵ and subject to a strict application of the principles of subsidiarity and proportionality.²⁸⁶ In some jurisdictions, although available, force has never been used so far²⁸⁷ or is extremely rare.²⁸⁸

214. Some legal systems have established a priority list of coercive measures; only if a first-level measure (low interference) remains unsuccessful the next step may be taken. However, the views on *what* interferes more or less seem to differ. *E.g.* in the Czech Republic, a fine (not exceeding 50,000 crowns) would be the first level; after that or instead the fetching of the child by force could be ordered. The court is not obliged to take either of these two steps if they would obviously be in vain. In Romania, the court is obliged by law to order a one-time fine in the return order which is due in case of non-compliance. No additional court order is then required; the Central Authority will transmit the relevant information to the financial authorities so that the fine can be executed. If this still does not make the abductor comply with the order, an additional court order imposing an additional fine (due for each day of non-compliance) or ordering the use of physical force would then be the next step. In the response from South Africa it was stated that contempt proceedings (leading to the imposition of a fine or to imprisonment) are the only means available to enforce a return order where the abductor does not comply voluntarily. However, it was also mentioned that, should problems still persist then in giving effect to the return order, the court which issued it could be approached for a specific order such as removal of the child from the care of the abducting parent.

and his or her return by force is legally impossible in Greece and that the child could only be returned to Austria if the father was ultimately willing to comply with the order.

²⁷⁶ *Supra*, note 26.

²⁷⁷ *Id.* at para. 111.

²⁷⁸ *Id.*

²⁷⁹ **Argentina, Canada, China (Macao), France, Georgia, Greece, Luxembourg, Malta, Monaco, New Zealand, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey.** See also *supra*, paras. 35, 38 et seq., 204.

²⁸⁰ **China (Hong Kong), United Kingdom (Isle of Man).**

²⁸¹ **Cyprus, Denmark, Malta, New Zealand, United Kingdom.**

²⁸² **Denmark, Finland** (used in difficult cases), **France, Malta, Netherlands, United Kingdom (Scotland).**

²⁸³ **Austria, Chile, Denmark, Malta, Netherlands.**

²⁸⁴ **Austria, Czech Republic** (as well as pecuniary fines), **Italy** (here it is the only coercive measure available).

²⁸⁵ **Luxembourg, South Africa** (see also *infra*, para. 214).

²⁸⁶ **Sweden, Switzerland.**

²⁸⁷ **Cyprus.**

²⁸⁸ **New Zealand.**

215. The reasons why one or the other measure is not used in practice are the same in most States: such measures are considered not to be in the best interest of the child – the imposition of a fine may impoverish the family consisting of the child and the current primary carer, the detention of the abducting parent would deprive the child of the current primary carer, and physical force is in some jurisdictions generally considered as not in line with the child’s welfare.

216. Several responses underlined that the best interests of the child have to be the primary consideration throughout the enforcement procedure. In the same vein, a number of respondents referred to mediation and to the involvement of social services which were discussed above under question III.B.3. It was underlined that in the long run, amicable solutions would always be preferable.

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

b) If problems occur during enforcement, may the enforcement organs unilaterally “upgrade” the intensity of coercive measures, or do they have to obtain authorization from any particular higher authority (e.g. an enforcement court or other)? Please specify.

217. For a summary of the responses to question III.C.7., reference is made to Part II.2. of this Report and to Annex III.

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*?

218. A few jurisdictions simply responded negatively, thereby leaving open whether court orders cannot be obtained at all in emergency situations around a child abduction case, or whether they just cannot be obtained outside office hours and / or *ex parte*.²⁸⁹ Some pointed out that this situation had never or rarely arisen in practice.²⁹⁰

219. Others responded positively.²⁹¹ Some made clear, however, that such orders could not be obtained outside office hours²⁹² or not *ex parte*.²⁹³ Sometimes, outside office hours such emergency measures may be taken by authorities other than a judge: *E.g.* in New Zealand, if a judge is unavailable, and a Court Registrar believes that a person is about to take a child out of New Zealand with the intent to, or in circumstances where the taking of the child out of New Zealand would be likely to, prevent compliance with a return order, the Court Registrar may take such measures. In Sweden, the police have the authority to take any required urgent measures, including bringing the child under immediate care. In several jurisdictions where *ex parte* orders are possible, the other party subsequently has to be given an opportunity to be heard.²⁹⁴ The same applies to emergency measures taken by the police in Sweden.

220. Some respondents specified that such measures could be taken *ex officio*,²⁹⁵ upon application by a party²⁹⁶ or by others such as the Central Authority,²⁹⁷ child protection authorities²⁹⁸ or the public prosecutor.²⁹⁹

²⁸⁹ Greece, Panama.

²⁹⁰ Czech Republic, United Kingdom (England & Wales, Montserrat, Scotland).

²⁹¹ Argentina, Austria, Bahamas, Bulgaria, Canada (Alberta, Manitoba, Quebec), China (Hong Kong), Denmark, Finland, Germany, Italy, Luxembourg, Malta (at any time before the application is determined), Mexico, Monaco, Netherlands, New Zealand, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (Isle of Man, Northern Ireland), United States of America.

²⁹² Bahamas, Chile, Cyprus, Slovakia, Sweden. In Sweden, however, the need for an immediate reaction is satisfied by the police’s authority to take any required urgent measures, including bringing the child under immediate care.

²⁹³ Cyprus, Luxembourg.

²⁹⁴ Netherlands, United Kingdom (Northern Ireland).

²⁹⁵ Canada (Quebec), Slovakia, Turkey.

²⁹⁶ Turkey.

221. Examples of measures that may be ordered in emergency situations include the following: orders for the service of documents, for the temporary placement of the child with children's services or a third party,³⁰⁰ for restraining the abducting parent from removing the child from the jurisdiction, including border alerts / passport control,³⁰¹ the surrender of travel documents,³⁰² reporting conditions to the police,³⁰³ or the transfer of temporary custody to one parent during the case.³⁰⁴ Some also mentioned contempt of court orders.³⁰⁵ See in more detail the responses to question III.C.3.

D. Costs

222. Article 26(1) and (2) of the 1980 Hague Child Abduction Convention read as follows:

"(1) Each Central Authority shall bear its own costs in applying this Convention.

(2) Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child."

223. So in principle the Convention aims at providing proceedings that are cost-free for the applicant. However, Article 26(3) permits a reservation. The provision reads:

"However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice."

224. This reservation was made by 29 States Parties to the 1980 Convention, namely Belarus, Bulgaria, Canada (British Columbia, New Brunswick, Ontario), China (Hong Kong), Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Israel, Lithuania, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Panama, Poland, Slovakia, South Africa, Sri Lanka, Sweden, Turkey, the United Kingdom, the United States of America and Venezuela. Twenty-two of them (Belarus, Bulgaria, China (Hong Kong), the Czech Republic, Denmark, Finland, France, Germany, Greece, Lithuania, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Panama, Slovakia, South Africa, Sweden, Turkey, the United Kingdom and the United States of America) have responded to the questionnaire.

225. Based on the responses received, on the following pages it will be discussed how enforcement and repatriation costs are allocated in practice and, where costs are incurred, to what extent, they are covered by a legal aid system.

²⁹⁷ Bahamas.

²⁹⁸ Netherlands.

²⁹⁹ Turkey.

³⁰⁰ Belarus, Canada (Alberta), Finland, New Zealand, United Kingdom (Isle of Man).

³⁰¹ Bahamas, Canada (Alberta), New Zealand.

³⁰² New Zealand.

³⁰³ Canada (Alberta).

³⁰⁴ Denmark.

³⁰⁵ Cyprus, United Kingdom (Isle of Man).

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?

226. A majority of jurisdictions responded that there are no costs incurred by the applicant for the enforcement (either because such enforcement proceedings for Hague return orders are cost-free, or because any costs arising for enforcement are covered by a legal aid scheme without any means or merits test; in other words, in both cases these costs are borne by the State).³⁰⁶

227. Other jurisdictions responded that costs are incurred.³⁰⁷ In some of them, these costs are part of the costs of the general court proceedings,³⁰⁸ in others they are not.³⁰⁹ Sometimes it is only a one-time fee for seeking enforcement at all;³¹⁰ sometimes every coercive measure is billed separately, either alone or in addition to a basic fee for enforcement.³¹¹

228. As concerns the calculation of the fees due, there are often tariffs in place, in most cases established by law, decree or order.³¹²

³⁰⁶ **Austria, Bahamas, Canada (Alberta** [no costs for enforcement proper if enforcement is carried out by public organisations, but parties are responsible for court procedure costs], **Quebec, Saskatchewan), Chile, Czech Republic** (only in exceptional cases when a party causes unnecessary expenses for the court or for other party it may be charged), **Denmark, Finland, France, Greece, Italy, Luxembourg, Mexico, Netherlands, New Zealand** (including representation by legal counsel), **Panama, South Africa, Sweden, Switzerland** (some cantons), **Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland** – but see also *infra*, note 315, **Scotland**).

³⁰⁷ **Bulgaria, China (Hong Kong), Germany, Lithuania, Norway, Slovakia, Switzerland** (some cantons), **United States of America**. All these States have made a reservation under Article 26 of the Convention. Moreover, the following States which have not made a reservation under Article 26 also responded that costs are incurred for enforcement: **Argentina, Canada (Manitoba), China (Macao), Cyprus, Georgia, Latvia, Malta, Romania, Spain, Switzerland** (some cantons). As required by the Convention in the absence of a reservation under Article 26, **Argentina, Cyprus, Georgia** and **Latvia** regularly impose these costs upon the abducting parent (see *infra*, note 314 and the adjoining text), and so do courts in **Canada (Manitoba)** and **Switzerland** in cases where costs are recovered. It seems, however, that in **China (Hong Kong), Malta, Romania** and **Spain**, costs are actually imposed upon the applicant. In **Romania**, this is not the case where the applicant is represented exclusively by the Ministry of Justice. Where he or she chooses to hire a lawyer, these costs may be covered by the legal aid system if the applicant is eligible; see *infra*, para. 231. **China (Hong Kong), Malta** and **Spain** equally referred to a system of legal aid. However, since these jurisdictions have not made any reservation under Article 26, no costs should be imposed upon the applicant.

³⁰⁸ **Canada (Manitoba)** responded that costs might be sought against the abducting parent separately or as a part of the costs for the entire request for return proceedings. In **Germany**, some costs are part of the costs for the general court proceedings, others are not: if the court requested the bailiff to remove the child from the abducting parent, or if the court orders the abductor to inform the bailiff under oath about the whereabouts of the child, the fees and expenses of the bailiff are part of the costs and expenses of the proceedings as a whole. Furthermore, in **China (Macao), Cyprus, Latvia, Lithuania, Malta** and **Romania**, enforcement costs are part of the costs of the proceedings as a whole.

³⁰⁹ **Argentina, China (Hong Kong), Slovakia**. In **Germany**, if the court orders a coercive measure (physical force to remove the child, fine, detention), this generates a court fee. The party against whom the coercive measure is ordered will also be ordered to bear these costs. In addition, the activity of the bailiff generates a fee for him / her. If it was the court which requested the bailiff to proceed to coercive enforcement, this fee, as part of the total costs of the proceedings, will be allocated among the parties according to the discretion of the court. In practice, where return is ordered, it is often the abductor who has to bear all costs, or the court orders that each party bears his or her own expenses (attorney's fees etc.) and the court fee and bailiff's fee will be charged upon the State. In **Norway**, no court fees are payable for cases heard under the Child Abduction Act under section 15 paragraph 3 sub-paragraph 2 of the Court Fees act, but for the 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.

³¹⁰ **Malta, Slovakia**.

³¹¹ **Argentina, Germany**.

³¹² **Argentina**: The estimate is made in accordance with the Duty Schedule for the estimate of professional fees. Since this is an enforcement with no economic basis, as it is not a financial matter, costs are very low. They are estimated in accordance with the procedural steps followed and relate to enforcement work. **Bulgaria**: Fees are regulated by Tariff No 1 of the Law on State fees, fees collected by courts, public prosecutors, investigating services, the Ministry of Justice and the registrations agency; the tariff is adopted by decree of the Council of Ministers. Chapter 8 "Costs" of the Code of Civil Procedure also applies. **China (Hong Kong)**: If formal enforcement proceedings are instituted, the applicant will have to pay fixed sums. If the applicant is represented by a lawyer, he / she is also required to pay the lawyer's fees (which are also calculated on a time basis) unless his / her legal representation is funded by legal aid. **China (Macao)**: The costs incurred for the enforcement are regulated in the general legal regime for court costs, contained in Decree-Law No 63/99/M, of 25 October 1999. According to this regime, the "child delivery procedures" benefit

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?

229. In some jurisdictions, a legal aid system generally waives or reimburses all costs for Hague return proceedings without any further condition so that they are *de facto* cost-free. These systems were dealt with under question III.D.1. above.

230. In other systems, enforcement generally generates recoverable costs. In some jurisdictions, it is the applicant seeking to enforce an order who would have to bear them,³¹³ in others it is the defendant / abductor.³¹⁴ In yet another group of jurisdictions, this is decided on a case-by-case basis by the court.³¹⁵ Sometimes there are also default rules if the primary debtor cannot or does not pay.³¹⁶

from a reduction of ¼ of the regular costs of the court proceedings. **Cyprus:** The Registrar of the Court will calculate the costs according to existing formulas. **Georgia:** According to the Law of Enforcement, costs incurred for the enforcement are calculated by the officer of the court. **Germany:** If the court requests the bailiff to remove the child from the abductor, the bailiff will charge a fee of 40 Euros plus his expenses. If the abductor is ordered to inform the bailiff under oath about the whereabouts of the child, the bailiff will charge 30 Euros. If the court orders a coercive fine against the abductor who does not comply with the original order, a court fee is due which depends on the amount of the fine ordered. The court fee for ordering coercive detention would normally be 78 Euros but could vary if the value of the case differs from the average assumption of 3000 Euros. **Latvia:** The bailiff calculates the execution costs. The calculation may be appealed. **Lithuania:** Enforcement costs encompass administrative costs, factual costs and the bailiff's fee. That fee is charged for services performed by a bailiff that are listed in the Instruction on Enforcement of Decisions, adopted by order of the Minister of Justice of Lithuania of 31 December 2002 No 432. **Norway:** The costs of the case are calculated according to the provisions of chapter 3 of the Enforcement Act and chapter 13 of the Civil Procedure Act. **Romania:** Law No 146/1997 concerning judicial taxes and Order No 1624/C/12.06.2003 of the Minister of Justice regulate maximum fees for the services of the enforcement officers. Court fees are due for the approval of coercive enforcement, for the service of the decision, for investigation and the enforcement proper. **Slovakia:** 500 Slovak Crowns. **Spain:** The enforcement costs are calculated by the secretary of the court according to the applicable chart of fees in light of the applications and documents submitted by the parties as reflected in the decision of first instance.

³¹³ **China (Hong Kong), Norway** (but see also *infra*, note 315), **Slovakia.** In **France**, the parties normally do not have to bear any costs related to enforcement. If, however, the applicant him- or herself (and not the public prosecutor) initiates enforcement, he / she will have to bear the costs (service, steps taken by the bailiff etc). All jurisdictions mentioned here have made the reservation under Article 26(3).

³¹⁴ **Argentina, Bulgaria** (unless the applicant abandons enforcement or the court annuls it, or the proceedings are stopped for reasons mentioned in Article 330 of the Code of Civil Procedure – e.g. where the enforcement proceedings have been terminated upon request of the applicant, because the writ of enforcement has been revoked or because of a judgment in favour of a third party who objected to enforcement into certain objects), **Cyprus** (see also note 315). **Georgia:** According to the Law of Enforcement, costs incurred for the enforcement are calculated by the officer of the court and have to be borne by the abducting parent. **Germany** (concerning court fees for ordering coercive measures). In **Latvia**, this enforcement fee is due once the judgment has been submitted for execution, even if the debtor subsequently complies with it voluntarily. In **Lithuania**, first the applicant has to advance the enforcement costs. After the decision is enforced, these costs are recovered from the abductor. **Switzerland:** see the following note.

³¹⁵ **Canada (Manitoba):** Costs might be sought against the abductor separately or as a part of the costs for the entire return proceedings. **Canada (Saskatchewan):** These costs are not generally recovered but the court can order an abducting parent to pay to the left-behind parent the costs of locating and returning a child, lost wages, travel expenses, any legal fees incurred, and any other expenses the court allows. **Cyprus:** The abductor is usually ordered to bear these costs. In **Germany**, the court has discretion in deciding to what extent either party shall bear the general costs of the proceedings including court fees and bailiff's fees (concerning specific court fees generated by the order of coercive measures see previous note; they will always be imposed on the abducting parent). **Norway:** the court may decide so upon request by the applicant. **Spain:** The court has to decide whether to order the losing party (the abductor) to bear the enforcement costs or to declare that each party will bear the costs caused by him or her. In that case, costs that cannot be attributed to any party will be equally divided. **Switzerland:** In those cantons where enforcement is not free of charge, enforcement costs can be imposed upon the abductor in whole or in part. **United Kingdom (Northern Ireland):** Usually the Legal Services Commission (LSC) would cover the enforcement costs. Costs are however in the discretion of the court, and it is possible that a private payer would be ordered to pay costs. **United States of America:** U.S. implementing legislation for the Hague Abduction Convention, 42 U.S.C. 11607(3), provides for all costs such as court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, to be imposed upon the abducting parent, unless doing so would be clearly inappropriate. In addition, the UCCJEA at section 317 permits costs of enforcement incurred for the intervention of the prosecutor, law enforcement officers or any other appropriate

231. But even in systems where a legal aid system waives or unconditionally reimburses all costs for Hague return proceedings, it may happen that the applicant wants to use extra services that are not covered by this unconditional exemption / legal aid system which was put in place for Hague cases. This often applies if a party hires a lawyer,³¹⁷ but in several jurisdictions these costs are then eligible for funding under a more general legal aid scheme if the conditions are met.³¹⁸ Similarly, where enforcement generally generates recoverable costs, the party who is in principle obliged to pay them may be eligible for legal aid under certain conditions.³¹⁹ Some respondents mentioned examples, such as a means test³²⁰ or a means and merits test.³²¹ Others simply stated that such conditions existed.³²² In Cyprus, a reduction or exemption is possible only if the Central Authority consents or does not want to claim the costs from the abductor. Sometimes any legal aid granted for the return proceedings on the merits would also cover the enforcement phase;³²³ in other jurisdictions it would not – at least not automatically. Another request would be required.³²⁴

232. Advance payment of enforcement costs or fees by the applicant was mentioned as a requirement for enforcement in very few responses.³²⁵ Others explicitly responded that this is not the case.³²⁶

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

public official under section 315 or 316 (with a view to enforcing a Hague return order) to be charged to the respondent when appropriate.

³¹⁶ **Cyprus**: primarily the abductor is liable, otherwise the Central Authority will bear the costs.

³¹⁷ **Belarus, Czech Republic, Malta, Netherlands** (concerning the abductor), **Romania, United Kingdom (Isle of Man)** (concerning the abductor).

³¹⁸ **Belarus, Czech Republic** (concerning the applicant), **Malta, Netherlands** (concerning the abductor), **Romania, United Kingdom (Isle of Man)** (concerning the abductor).

³¹⁹ **Belarus, Bulgaria**: Costs resulting from the involvement of a lawyer and costs for the actual return are not covered by the legal aid scheme. **Canada (Alberta)**: no specific enforcement costs but parties have to pay for the court proceedings; legal aid is available on a means test. If enforcement is carried out by private agencies, costs have to be borne by the parties. **China (Hong Kong), Germany, Lithuania, Norway**. In **Spain**, free legal aid is available under the *Hague Convention of 25 October 1980 on International Access to Justice* and the European Agreement on the Transmission of Applications for Legal Aid, done at Strasbourg on 27 January 1977. **Switzerland, United Kingdom (Isle of Man)**: The applicant is granted legal aid without a means or merits test. The defendant is responsible for his / her own legal costs unless he / she qualifies for legal aid on the usual grounds applicable to domestic proceedings.

³²⁰ In **Argentina**, legal aid is available to both parties. A person resident in Argentina must not own real estate or valuable personal property or have an income exceeding a certain amount; for a person resident abroad it is sufficient if the foreign Central Authority states that the applicant is eligible for legal aid in his country of residence. Parties to whom legal aid is granted will be represented by Public Defenders whose work includes providing legal assistance to the poor as provided by law. Payment of other costs may be deferred until the payment debtor's financial situation improves. **Canada (Alberta), China (Macao), Czech Republic, Netherlands, Norway** (gross income must not exceed the equivalent of 230 000 NOK per year), **Romania, Switzerland**: In those cantons where enforcement costs are imposed in whole or in part upon the abducting parent, this may be covered by legal aid if he / she is eligible under a means test.

³²¹ **China (Hong Kong)**. Depending on the financial resources of the applicant, he / she may have to pay a contribution under the legal aid legislation.

³²² **Belarus, Malta, United Kingdom (Isle of Man)**.

³²³ **Cyprus, Lithuania, Spain**.

³²⁴ **China (Hong Kong), Slovakia**.

³²⁵ In **China (Hong Kong)**, the court fee for enforcement must be paid by the applicant when filing the application for formal enforcement proceedings, unless the court has ordered that the abductor has to bear the repatriation costs or the applicant was granted legal aid also for the enforcement proceedings. In **Germany**, the court itself may not request any advance payment; neither does the bailiff if it was the court (and not the applicant) that instructed him to proceed to coercive enforcement. The Central Authority, however, does require an advance payment of 1500 euros once an application is filed, in order to cover court fees and the expenses for a lawyer to be hired to represent the applicant. Normally, this advance payment is sufficient to cover also enforcement costs. In **Lithuania**, the applicant has to pay the enforcement costs in advance before enforcement can start, unless he / she is either a welfare recipient, exempt from such payment under the Instruction on Enforcement of Decisions, adopted by order of the Minister of Justice of Lithuania of 31 December 2002 No 432, or payment is suspended under the Instruction by agreement between the applicant and the bailiff. For recognised welfare recipients, the Ministry of Justice will cover the costs. **Slovakia**.

³²⁶ **Argentina, Cyprus, New Zealand, Romania, Spain**. In **New Zealand**, an applicant for a return order or contact order will not be required to provide any security, bond, or deposit for the purpose of guaranteeing the payment of any costs or expenses of any proceedings relating to his or her application (section 120).

costs? Who has to pay for the repatriation? Is advance payment a condition for enforcement?

233. Most responses indicated that repatriation costs are not considered as part of the enforcement costs.³²⁷ In several jurisdictions, however, these costs are actually part of the enforcement costs³²⁸ or of the costs of the proceedings in general.³²⁹

234. In most of the jurisdictions that responded, it is the applicant who pays for the repatriation of the child.³³⁰ Some of these jurisdictions mentioned that the applicant also has to make the practical arrangements required, such as flight bookings, hotel reservations, etc.³³¹ Sometimes the responses clearly stated the applicant's obligation to fund the repatriation; in other responses it is merely stated as a fact that this is what normally happens. It is not possible to draw a clear dividing line between these two groups so they will be treated together. Interestingly, the response from Argentina states that in practice it is normally the applicant who pays the repatriation costs while under the law, the abductor is liable for them. Similarly, in the responses from Germany and Mexico it is explained that often the applicant comes to the country and takes the child from the bailiff. In these cases, enforcement ends with the return of the child to the applicant, and the travel costs are therefore no enforcement costs any more. Sometimes the financial responsibility of the applicant may be shifted to the abductor either in full or in part,³³² either by a court order³³³ or by agreement of the parties.³³⁴

235. In other jurisdictions, the abducting parent is directly obliged to pay the costs for repatriation.³³⁵ In the response from Manitoba it is pointed out that either parent could be required to pay for the repatriation but in practice, cases have almost invariably involved the abductor returning to the State of origin with the child and paying for the child's transportation.

236. Sometimes the court orders on a case-by-case basis which of the parties has to bear these costs.³³⁶ In a number of responses it was only indicated that "the parents", "the parties" or "the applicant and / or the abductor" have to bear the repatriation costs, without further specifying whether this concerns both or only one of them, and under which circumstances.³³⁷

237. Sometimes there are State-controlled resources in place to fund the return of the child – either in general or if the parties lack the financial means. Such resources sometimes come from a legal aid system³³⁸ or similar system.³³⁹ In a few countries, the

³²⁷ **Austria, Bahamas, Canada (Manitoba, Saskatchewan), Chile, Denmark, Germany, Greece, Italy, Netherlands, New Zealand, Norway, Slovakia, Turkey.**

³²⁸ **Argentina, Lithuania, Romania.** It has to be kept in mind that in **Lithuania** and **Romania**, enforcement costs are part of the costs of the proceedings as a whole. **Panama** responded that repatriation costs are considered as enforcement costs, but that there are no other costs for the proceedings.

³²⁹ **Cyprus.**

³³⁰ **Austria, Chile, China (Hong Kong, Macao), Czech Republic, Finland, France, Germany, Italy, Luxembourg, Mexico, Panama, Slovakia, United Kingdom (England & Wales, Isle of Man, Northern Ireland).**

³³¹ **France, Germany.**

³³² **Panama.**

³³³ **China (Hong Kong), Finland.** See also the comments on **New Zealand** in note 336.

³³⁴ **Italy, Slovakia** (in case of voluntary return).

³³⁵ **Argentina, Canada (Manitoba), Cyprus** (the reply states that this is what courts normally order), **Georgia, Spain** (the law requires the judge to state this in the return order), **Switzerland** (either the abducting parent or both). In **Lithuania**, the applicant has to pay before enforcement can take place; these costs are later recovered from the abductor (see *supra*, note 325, for further details). In the **United States of America**, implementing legislation for the Hague Abduction Convention, 42 U.S.C. 11607(3) provides for all costs, including the costs of repatriation, to be imposed upon the taking parent, unless doing so would be clearly inappropriate.

³³⁶ **Bahamas, Denmark.** In **New Zealand**, normally "the parties" would bear these costs but the court can order the abducting parent to pay them in whole or in part.

³³⁷ **Canada (Alberta, Quebec, Saskatchewan), Greece, Malta, Netherlands, New Zealand, South Africa** (costs borne equally by the parties unless they agree otherwise).

³³⁸ **United Kingdom (Isle of Man: means test, Scotland: no means test).**

³³⁹ In **Switzerland**, funding may be available under the Federal Law on the Assistance to Victims of Offences through the competent cantonal authorities.

Central Authority has resources for this, either in case of financial need,³⁴⁰ reserved to exceptional cases³⁴¹ or under certain conditions: The Swedish Ministry for Foreign Affairs has a small amount of money, a "Children's Fund", at its disposal, dedicated to *i.a.* repatriation of abducted children. However, the Fund is only for voluntary returns. If a court has ordered a child's repatriation through police assistance, the police authority will cover the costs. In the response from the United Kingdom (Montserrat), it was stated that expenses incurred by the Attorney General under the Child Abduction and Custody Act 1997, which implements the 1980 Hague Convention, are to be paid out of the Consolidated Fund. All these are examples of funding provided by the requested State (*i.e.* the State where the return proceedings took place, and from where a child is then to be sent abroad). However, sometimes funding may also be provided by the requesting State: In Canada, there is a travel reunification program in place that would bear the costs if a child is returned to Canada.³⁴² In Mexico, the Mexican authorities would seek financial assistance from the embassy or consulate of the requesting State if the parties lack the necessary financial means to actually repatriate the child.

238. A further question aimed at finding out whether advance payment of the costs of repatriation (*e.g.* airfare) is required before enforcement will start. Where it is up to the parties, in particular the applicant, to organise repatriation,³⁴³ it was mentioned that often the court sets out in detail the arrangements to be made by the parties. But it is interesting to see that even in a number of jurisdictions where State authorities make the practical arrangements for the child's repatriation, no advance payment is required and these expenses will only later be recovered from the party who has to bear them.³⁴⁴ However, from the response given by the Saskatchewan Central Authority one can guess that in practice it will nevertheless quite frequently be the parties who actually purchase the tickets: In practice the Central Authority, who is responsible for the organisation of the child's repatriation, requires the left-behind parent or the abducting parent to plan in advance how the child is to be returned to his / her state of habitual residence. Panama points out that often the left-behind parent lacks the resources for the child's travel costs, and so does the abductor. This makes it difficult for the court to subsequently enforce these costs.

239. A few States responded that there may be cases where an advance payment of repatriation costs may be required: In South Africa (where the Central Authority has to organise repatriation), advance payment in respect of travel costs may be a condition for enforcement if the court ordered this in the return order. Similarly, in Lithuania, where the responsibility to organise the child's repatriation should be established in the return order, this order may state that it is the enforcement organ to organise this repatriation. In such case, the repatriation costs are considered as factual costs that a bailiff incurs during the process of the enforcement, and the advance payment of the fee for enforcement which generally has to be made by the applicant before any enforcement action is being taken would have to include them. These amounts would later be recovered from the enforcement debtor.³⁴⁵

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

³⁴⁰ **New Zealand.**

³⁴¹ In **Switzerland**, the Central Authority, jointly or together with the canton, will in exceptional cases pay the repatriation costs in whole or in part.

³⁴² This is coordinated by the Missing Children's Registry.

³⁴³ The **Bahamas, Chile** and **Slovakia** mentioned that no advance payment of repatriation costs is required. In these countries, however, it is up to the applicant (in **Slovakia** in co-operation with the Central Authority) to organise the repatriation so normally he / she would have to make the necessary arrangements and incur expenses at a time chosen by him or her.

³⁴⁴ **Argentina, Canada (Saskatchewan), Cyprus, New Zealand, Panama, Romania, Spain.** In **Canada (Saskatchewan), Cyprus, New Zealand** and **Romania**, it is the Central Authority who organises the repatriation. Similarly, in **Argentina** and **Spain**, the court, assisted by the Central Authority and other authorities if necessary, makes the practical arrangements for repatriation. All these jurisdictions stated that no advance payment of the repatriation costs is charged.

³⁴⁵ See *supra*, note 325.

240. In many jurisdictions the Central Authority is seen as the natural source to provide such information to the foreign applicant.³⁴⁶ Some Central Authorities however specified that they will give such information if the applicant requests it, not on their own initiative.³⁴⁷

241. Often it is also the lawyer representing the applicant who will give the information.³⁴⁸ In most cases, this is in addition to the Central Authorities, but a few jurisdictions rely exclusively on attorneys to inform their clients.³⁴⁹ In one case, the local Bar Associations were mentioned as a source.³⁵⁰ Courts also provide this information in some jurisdictions, either as such or as part of the decision which might contain details on this.³⁵¹ In one jurisdiction, it is the bailiff to whom the applicant or his / her representative submits the enforcement order issued by the court, who informs the applicant about the enforcement costs.³⁵²

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

242. In China (Hong Kong), no specific duties exist relating to the enforcement of Hague return orders; their enforcement follows the general rules and practice for the enforcement of court decisions.³⁵³ Others underlined, however, that the best interests of the child are the overall guiding principle.³⁵⁴ The importance of co-operation, e.g. between Central Authorities and all parties involved, was highlighted,³⁵⁵ and it was stressed that even at the enforcement stage every effort should still be made to reach an amicable solution.³⁵⁶

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

243. See above on page 19 *et seq.*

³⁴⁶ **Argentina, Canada (Manitoba, Saskatchewan), Chile, China (Macao), Cyprus, Finland, Germany, Latvia, Norway, Panama, Slovakia, South Africa, Spain, Turkey.** Germany mentioned that applicants normally receive a letter which confirms receipt of their application, requests them to make an advance payment for court and attorney's fees and informs them in general that fees will be incurred for the proceedings. There is no specific information on the cost of enforcement.

³⁴⁷ **Malta, Netherlands, United Kingdom (Isle of Man)** – but the Central Authority has prepared a general leaflet on child abduction and published this information on the Internet in 2005).

³⁴⁸ **Argentina, Canada (Alberta), China (Hong Kong), Finland, Greece, Norway, United Kingdom (Northern Ireland).**

³⁴⁹ **Canada (Alberta), China (Hong Kong), Greece, United Kingdom (Northern Ireland).**

³⁵⁰ **Spain.**

³⁵¹ **Norway, Switzerland.**

³⁵² **Lithuania.**

³⁵³ **China (Hong Kong).**

³⁵⁴ **China (Hong Kong), Denmark, Lithuania, Malta, Sweden, United Kingdom (Isle of Man).**

³⁵⁵ **Panama.**

³⁵⁶ **China (Hong Kong), Norway, Sweden, Switzerland.**

IV. STATISTICAL INFORMATION

244. In the fourth part, statistical information for the years 2001-2003 was requested.

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.**

245. Through the first question it was intended to assess how many of the return orders made in a jurisdiction have to be enforced by coercive measures because they are not complied with voluntarily. For about half of the 41 jurisdictions that responded, this question was considered as not applicable for various reasons – because no return orders were made during the period in question,³⁵⁷ no statistics were available in general³⁵⁸ or on enforcement in particular,³⁵⁹ or for other reasons not specified.³⁶⁰

246. Six respondents indicated that, although no exact figures on the need for coercive enforcement were available, they were able to give a trend. Even before looking at figures, it becomes evident that there are differences in this respect. While in France, the Netherlands, the United Kingdom (Northern Ireland) and the United States of America, the majority of return orders or even all of them were complied with voluntarily and coercive enforcement remained exceptional, the Czech Republic stated that coercive enforcement occurred quite often.³⁶¹

247. This diverse picture is confirmed by the figures available. In many jurisdictions, return orders were complied with voluntarily in all or almost all cases.³⁶² Most of these jurisdictions had very few return orders in absolute terms – generally between one and two.³⁶³ In other jurisdictions, coercive enforcement occurs for up to one third of returns ordered.³⁶⁴ Most of these jurisdictions issued between one and five return orders in the years in question; only Germany had a significantly higher number with 28, 28 and 15 return orders. In Cyprus, half of the orders had to be enforced throughout the three years in question. Finally, in a last group of four jurisdictions there were high variations from one year to another, ranging sometimes from 0% to 50%, sometimes from 50% to 100%.³⁶⁵ These variations may be explained by the low number of return cases and resulting return orders in absolute terms; in Romania, for example, two return orders were made per year, and whether none, one or both had to be enforced has a huge impact on the percentage. Similarly, in Chile we are faced with two, two and four returns ordered, respectively, and in Quebec with four, five and three. The situation in Italy is different, however: Here, seven, seventeen and thirteen returns were ordered in the three years concerned, and the percentage of coercive enforcement ranges from 24 over 39 to 57%.

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**

³⁵⁷ Bahamas, Georgia, Latvia, Lithuania, South Africa.

³⁵⁸ Canada (Alberta), Greece, China (Macao).

³⁵⁹ This was stated by Denmark, Spain, Sweden, the United Kingdom (England & Wales, Northern Ireland), and apparently also applies to Austria, Monaco, Switzerland and the United Kingdom (Scotland).

³⁶⁰ Belarus, Luxembourg, Turkey, United Kingdom (Montserrat).

³⁶¹ For the United States of America, it is indicated that out of a sample of 400 return cases, enforcement issues were reported only in seven cases. Mexico and the Netherlands report 1-2 coercive enforcement proceedings a year without indicating the total number of returns ordered.

³⁶² Bulgaria, Canada (Manitoba, Saskatchewan), China (Hong Kong), Finland, Malta, Panama, Slovakia, United Kingdom (Isle of Man, Northern Ireland). Northern Ireland mentioned one non-Convention case in which the children aged 13 and 15 respectively refused to return and in the end the successful party abandoned the enforcement of the return order.

³⁶³ Only in China (Hong Kong) and Slovakia, four returns were ordered in one of the years in question.

³⁶⁴ Figures for 2001 / 2002 / 2003: Argentina 25% / 0% / 33%, Germany 29% / 21% / 13%, New Zealand 25% / 25% / 9%, Norway 25% / - / -.

³⁶⁵ Canada (Quebec) 25% / ? / 66%, Chile 50% / 0% / 25%, Italy 57% / 24% / 39%, Romania 100% / 50% / 50%.

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).

248. The second question aimed at exploring how often return orders are challenged before the court, either by a legal remedy on the merits or by challenging a particular enforcement measure. Here again, the largest group consists of those unable to provide figures because either no cases were processed during the years in question, no orders were made, no statistics were kept concerning appeals, or the question was left unanswered.³⁶⁶ Another group of jurisdictions reported pending proceedings or orders made, but none of them had been subject to any legal challenge.³⁶⁷ Several others provided figures on how many orders had been challenged, without however indicating whether such challenge had been on the merits or concerning a particular enforcement measure which had been ordered.³⁶⁸ From answers given to other questions, it may nevertheless be concluded that these challenges referred to the merits of the return order; isolated challenges against a particular enforcement measure are unknown in most of the jurisdictions that participated in the questionnaire. Others indicated explicitly that the challenges had been on the merits.

249. Although a number of respondents provided figures concerning the number of legal challenges brought (clearly or supposedly) on the merits, it is difficult to compare them because the point of reference varies. Some indicated the number of Hague return applications received in the years concerned, others the number of pending proceedings, the number of court decisions made or the number of return orders. Not every application received by a Central Authority in the requested State leads to court proceedings (manifestly inadmissible or ill-founded applications may be among the applications received; moreover, amicable agreements and voluntary return are frequent in many States at this stage); not all court proceedings result in an order (again, applications may be withdrawn or a voluntary return / amicable solution reached); not every order is a return order.³⁶⁹

250. Another purpose of this question was, however, to explore in how many States enforcement measures were challenged separately (*i.e.* independently of a challenge of the return order on the merits), and how often such challenge was successful. From the responses to question II.4. it occurs that in Austria, the Bahamas, Bulgaria, Canada (Alberta, Manitoba, Saskatchewan), China (Hong Kong), Finland, Germany, Greece,

³⁶⁶ Belarus, Canada (Alberta, Manitoba, Saskatchewan), China (Macao), Denmark, France, Georgia, Greece, Latvia, Lithuania, Luxembourg, Monaco, South Africa, Spain, Sweden, Switzerland, United Kingdom (England & Wales, Montserrat, Scotland) and United States of America.

³⁶⁷ Bahamas (5 proceedings, no return ordered), Bulgaria (7 proceedings, 1 return ordered), Cyprus (20 / 18 / 20 return orders), Finland (5 proceedings, 4 returns ordered), Malta (4 proceedings), Norway (9 applications), Panama (3 applications), United Kingdom (Isle of Man) (2 proceedings), (Northern Ireland) (6 / 3 / 3 return orders).

³⁶⁸ Argentina, Austria, Canada (Quebec), China (Hong Kong), New Zealand, Turkey.

³⁶⁹ These were the figures and indications given: **Argentina**: 31 applications, 4 challenges (13%); **Austria**: 21 proceedings, 3 return orders made, 3 challenges (14% of proceedings); **Canada (Quebec)**: 12 return orders made, 5 challenges (4 against return orders, 1 against refusal) (33% of all orders made, 42% of return orders made); **Chile**: 8 return orders, 5 challenges (*recurso de Queja* (*i.e.* exceptional further appeal to the Supreme Court) and *recurso de Amparo* (appeal brought by the abducting parent who has been arrested) (62,5%); **China (Hong Kong)**: 7 return orders, 1 challenge (14%); **Czech Republic**: 33 proceedings pending, 13 challenges on the merits (39%); **Germany**: 229 proceedings, 32 appeals on the merits = 14%; no statistics kept concerning whether the challenges brought were directed against the merits of the return order or against enforcement measures; **Italy**: 118 applications, 37 return orders, 32 refusals, 2 appeals; **Mexico**: 2-3 cases per year in which appeals are filed (*recurso de apelación* (appeal) and *Juicio de Amparo*); **Netherlands**: 2002 & 2003: 59 return applications, 24 returns ordered, "occasionally an appeal on the merits before the appellate court, even before the Supreme Court"; **New Zealand**: 47 return orders, 6 challenges (13%); **Slovakia** (6 proceedings pending in 2003, 1 return order made 2002-2003, 3 challenges on the merits, 50% of pending proceedings); **Turkey**: 102 return applications, 32 decisions made, 14 challenges on the merits (26 return orders, 6 refusals; 14% of applications; 44% of all decisions). **Switzerland** mentions that out of 10 returns achieved in 2003, 3 were ordered. Apparently, there were also three challenges (100%).

Malta, Mexico, New Zealand, Romania, Spain and Switzerland it is possible to separately challenge a formality such as a *formule exécutoire* and / or the order of a specific coercive measure. Romania is the only jurisdiction which actually reported challenges that were brought against enforcement.³⁷⁰ The Bahamas, Canada (Manitoba, Saskatchewan), China (Hong Kong), Finland, Malta, responded that all challenges brought were directed against the order on the merits, not against decisions relating to enforcement. The other responses did not address this point – sometimes because no statistics are kept on this issue.

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)?

251. In light of the responses to the previous question, this question was not applicable to a large number of the participating jurisdictions because there had been no cases, no challenges at all, no challenges at the enforcement level, or no statistics were kept.³⁷¹ Others report a very low success rate of legal challenges: In Argentina, Austria, Canada (Quebec), Chile, Italy, Romania and Turkey, none of the legal challenges was successful. In the Netherlands, 24 returns were ordered, and in published case law only one example of a successful challenge (on the merits) was found.

252. In some countries, however, the success rate of legal challenges is significantly higher: In the Czech Republic, six of the thirteen challenges brought against return orders (on the merits) were successful (46%). Mexico also estimates a rate of about 50%. It seems that in Switzerland, one of the three challenges was successful while in another case, the parties reached agreement and the third case was still pending at the time of the response to the questionnaire.

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?

253. Many jurisdictions did not have any data available in answer to this question – either because no statistics are kept or because coercive enforcement has so far not been necessary.³⁷² Some responded that the order often fixes a timeline for return, and in that case this timeline is decisive.³⁷³

254. Among those who were able to provide further details, some reported that normally a return order is complied with voluntarily within a few days or weeks after it was made.³⁷⁴ In some cases the decision was enforced on the day of the hearing.³⁷⁵ Similarly, others indicate a period of up to one week,³⁷⁶ between one and two weeks³⁷⁷

³⁷⁰ Romania: 6 return orders made, 3 pending cases, 6 challenges (2 appeals, 1 further appeal [*recours*], 3 challenges to enforcement), 100% of return orders challenged; 50% of the challenges are on the merits, 50% on enforcement.

³⁷¹ Bahamas, Belarus, Bulgaria, Canada (Alberta, Manitoba, Saskatchewan), China (Hong Kong, Macao), Cyprus, Denmark, Finland, France, Georgia, Germany, Greece, Latvia, Lithuania, Luxembourg, Malta, Monaco, New Zealand, Norway, Panama, Slovakia, South Africa, Spain, Sweden, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland, Scotland), United States of America.

³⁷² Bahamas, Belarus, Bulgaria, Canada (Manitoba, Saskatchewan), China (Hong Kong, Macao), Denmark, Georgia, Germany, Greece, Latvia, Lithuania, Luxembourg, Malta, New Zealand, Panama, Romania, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland), United States of America.

³⁷³ Canada (Quebec), Netherlands, United States of America.

³⁷⁴ Argentina, Finland, France.

³⁷⁵ Argentina, Austria, United States of America. In all three jurisdictions, this represents only one end of a time scale; other cases took longer.

³⁷⁶ Italy: 3 days until removal from abductor, 5 days until repatriation.

³⁷⁷ Canada (Quebec), United Kingdom (Scotland).

or two weeks to a month.³⁷⁸ Others count in months rather than weeks,³⁷⁹ and this may even turn into a year or more.³⁸⁰

³⁷⁸ **Mexico, Netherlands.**

³⁷⁹ **Austria:** same day to 8 months, **Canada (Alberta):** 2 weeks to 2 months, **Cyprus:** 2-3 months, **Czech Republic:** 7 months, **Norway:** 15-25 weeks.

³⁸⁰ **Chile:** no average known; in a particular case, it could be anything between 3 weeks and more than a year; **Monaco:** average varies, but no longer than a year.

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?

255. Most jurisdictions responded that they do not have any specific agreements in this respect.³⁸¹ Some indicated that such agreements with agencies or others involved in the enforcement of return orders were not necessary because there were no agencies involved in enforcement.³⁸² Others pointed out that in their legal system, such agreements were unnecessary or even impossible by law because the respective roles of all authorities, bodies or agencies involved in Hague return proceedings and the enforcement of return orders were defined by law and not subject to agreements of those involved.³⁸³ New Zealand mentioned that when the Convention came into force in New Zealand, the police and the former Department of Child, Youth and Family had developed internal protocols that set out how each agency was to respond to requests for assistance by the Central Authority. Many stressed that co-operation³⁸⁴ has developed over time on a case-by-case basis, has not been formalised and generally works well.³⁸⁵

256. Canada, Chile, Denmark, Finland, Mexico, the Netherlands, Panama and Spain reported some more formalised co-operation agreements. Some of these establish a more general framework of co-operation and exchange of information outside individual cases as well as concerning individual cases (in particular in Denmark and Finland); others regulate co-operation between different bodies once an abduction case arises (Chile, Mexico, the Netherlands, Panama) or combine both aspects (Canada, Spain):

257. In Denmark, a co-operation group has been formed by the Central Authority, the Ministry of Foreign Affairs, the police, and the Ministry of Social Affairs. The group has held some meetings in order to share experiences and co-ordinate the work regarding abducted children.³⁸⁶ Similarly, in Finland a multi-professional group for child abduction cases was created in 1998. It consists of nominated contact persons from different

³⁸¹ **Argentina, Austria, Belarus, Bulgaria, China (Hong Kong, Macao), Czech Republic, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, New Zealand, Norway, Romania, Slovakia, South Africa, Sweden, Switzerland, Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland, Scotland), United States of America.**

³⁸² **Austria, Cyprus.**

³⁸³ **China (Macao), Italy.** According to the **Czech Republic**, even the provisions of the Child Abduction Convention are sufficient. In **Germany**, courts and the Central Authority co-operate with local Youth Welfare offices and the International Social Service on a case-by-case basis within the existing legal framework (e.g. Social Security Code [*Sozialgesetzbuch*]). **Slovakia** refers to the Act on Social Assistance and other domestic acts governing co-operation between the State bodies in this area.

³⁸⁴ In many responses, examples of the authorities, agencies and other bodies that co-operate on a case-by-case basis if necessary were provided: In the **Bahamas**, the Central Authority (Ministry of Foreign Affairs) liaises with the Office of the Attorney General (which represents the applicant in court). The latter liaises with the Royal Bahamas Police Force and the Department of Immigration to locate the abducting parent, and with the Department of Social Services to provide reports on the status of the child. Other actors mentioned include the police, Immigration Department and Social Welfare Department who would endeavour to provide appropriate assistance upon the court's request pursuant to a return order (**China – Hong Kong**), the police (**Georgia**), Central Authority, Attorney General's Office, the courts and the police (**Malta**), Central Authority, Court of Execution and Enforcement, child care authorities, embassies, the Enforcement Officer and the police (**Norway**), the Central Authority and the offices of the State Solicitor, the South African Police Service, Social Welfare Agencies (government and non-government) (**South Africa**), the Central Authority, lawyers, courts, social authorities, the International Social Service, the police, prosecutors, professors, child psychologists etc. (**Sweden**), social services, health services, education and the police in relation to child care issues of all types (**United Kingdom – Isle of Man**), Missing Children Clearinghouses (**United States of America**). These clearinghouses are arms of local law enforcement specialised in missing children issues. They were established in co-operation with the National Center for Missing and Exploited Children (NCMEC) and exist in every state of the United States. In the response from **Finland** it is stated that if enforcement appears to be difficult in an individual case, all the competent authorities for that case (the local enforcement officer, the social workers, a medical doctor etc.) work as a team. The Central Authority is informed of the situation and keeps close contact with the requesting authority.

³⁸⁵ **China (Hong Kong), Czech Republic.**

³⁸⁶ In 2004, the group has also set up a website regarding child abduction which is available in Danish and English at < www.boernebortfoerelser.dk >.

agencies (e.g. from the Ministry for Foreign Affairs, the Ministry of Justice, the Social Welfare Authority, the police, the Border Guard, the mental health care, enforcement officers, etc.). It is convoked approximately twice a year to discuss these matters. According to the Finnish experience, it has proved very useful to have a list of contact persons from different bodies that may be contacted where necessary since child abduction cases are relatively rare at the local level.

258. The Spanish Judicial Network of International Judicial Co-operation, REGUÉ, created by Regulatory Agreement 5/2003, of the General Council of the Judiciary, works in the area of international judicial co-operation and assists the judges and courts of Spain with a view to correctly applying international treaties. There are institutional and technical contact points, members of the network and collaborators. One of them has been designated by the Council as an expert for international child abduction matters. In addition to this inner-Spanish network, there are four contact points of the European Judicial Network in Civil Matters in Spain: two in the General Council of the Judiciary and two at the Ministry of Justice (Subdirectorato General of International Legal Co-operation) in order to provide information and respond to consultations by the judicial authorities in civil law matters, including child abduction. This could also concern information required by a Spanish judge who is seised with return proceedings and needs information concerning the legal situation in another EU Member State before deciding whether to return the child to that State.

259. In Mexico, there is an agreement between the higher courts of the United Mexican States to assist each other in all cases not only under the 1980 Convention but also in internal cases. This agreement is reflected in agreements of the respective presidencies of the courts and the Statutes on the organisation of these courts.

260. Canada has established a comprehensive nationwide programme. In general, the Central Authorities under the Hague Convention on the Civil Aspects of International Child Abduction in Canada work closely with the employees of the departments and agencies to prevent child abduction and to locate children who are being held illegally or have been taken abroad illegally. More particularly, the "Our Missing Children" Programme in Canada is a co-operative arrangement within Canada involving various government departments and agencies working together to effectively and efficiently locate and return children to their parents / legal guardians. The programme provides an umbrella framework for agencies and departments who have a role to play in the case of a missing or abducted child. This co-operation developed over time as various government departments, working together on missing children's files, acquired a closer appreciation of each other's mandates and determined that it would be beneficial to join forces so that contacts, resources and ideas could be exchanged on a timely basis, thus enhancing the protection of children. The programme commenced in 1985 and has evolved over the years as new departments and agencies, working in the area of missing and abducted children, partner and affiliate with the programme.³⁸⁷ In Quebec, the Montreal police and the *Sûreté du Québec* (Quebec provincial police) are partners in the "Our Missing Children" Programme. Other Canadian provinces reported further initiatives: The Central Authority of Alberta has agreements with children's services, the Edmonton police, international social services Canada, the Canadian travel reunification program for children returning to Canada, and the Royal Canadian Mounted Police's missing children's registry. The Central Authorities of Manitoba and Saskatchewan³⁸⁸ also provide Crown opinions to law enforcement agencies in the province in criminal parental child abduction situations and have an ongoing relationship with them, as well as police contacts to call upon in situations requiring law enforcement assistance.

261. In Chile, the Central Authority has initiated an agreement with Interpol Chile. According to this agreement, Interpol assists in localising children which have been

³⁸⁷ To learn more about the programme, see < www.ourmissingchildren.ca >. A toll free number in North America is available 24 hours a day 1-877-318-3576.

³⁸⁸ In **Manitoba**: legal counsel with the Family Law Branch, Manitoba Justice; in **Saskatchewan**: legal counsel within the provincial Department of Justice.

abducted to, or are unlawfully retained in, Chile. This can be relevant before the institution of return proceedings, but also after return has been ordered if the abducting parent takes the child into hiding in order to avoid enforcement. In the Netherlands, the Central Authority and the Child Care and Protection Board have concluded an agreement under which the Board may accompany the police when they are searching for a child.

262. In Panama, there is an agreement between the immigration office, the child courts and the Central Authority. When the child court orders the return, the Central Authority will contact the requesting Central Authority. Jointly, they will fix a date for the return. The Central Authority also contacts the immigration office concerning the exit control for the child. If the child is not a national of Panama and requires an exit permission, the immigration office will then give this permission without any cost. The consulate of the country to which the child is returned, together with the Central Authority of Panama, will hand over the child to the left behind parent if that parent has come to Panama. In many cases, however, the child will have to travel alone because the left-behind parent lacks the economical resources to travel.

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?

263. At the international level, the picture is even clearer: With one exception, none of the jurisdictions that responded to the questionnaire has concluded any formal or informal co-operative agreements with other States between Central Authorities or agencies, or at the judicial level, with regard to the enforcement of Hague return orders.³⁸⁹ Some responded that co-operation is based on informal understanding³⁹⁰ and has developed *ad hoc* according to the needs,³⁹¹ and that co-operation with Central Authorities in other Contracting States generally works well on this basis.³⁹² Argentina stressed that the enforcement of return orders made in Argentina falls within the responsibilities of the courts in Argentina and is therefore not the subject of international co-operation agreements. Reference was made, however, to a close co-operation of the Central Authority and the courts of Argentina with Interpol in locating the child and enforcing the return order. It was underlined that even without a formal agreement at national level, Interpol at a global level is expressly committed to collaborating in cases of cross-border abductions of minors.

264. Spain mentioned a Convention between Spain and Morocco³⁹³ on legal assistance, recognition and enforcement of judicial decisions in matters of custody and access rights and return of minors, concluded in Madrid on 30 May 1997. Others refer to events and arrangements of a different nature that may also contribute to enhancing mutual understanding and co-operation, including in the area of enforcement: Germany mentions two different co-operation mechanisms it has established with France, on the one hand, and the United States of America on the other hand. With both States, Germany has a large number of cases, and this has been so for a long time already. In particular, there are also a number of contact cases which are by nature ongoing long term issues. As concerns the United States of America, the State Department and the German Federal Ministry of Justice have established an expert group that meets regularly and handles difficult cases concerning children. The Central Authorities of both sides are part of this group. Moreover, in Franco-German cases a group of Members of Parliament

³⁸⁹ This is true for **Argentina, Austria, Bahamas, Belarus, Bulgaria, Canada (Alberta, Manitoba, Quebec, Saskatchewan), Chile, China (Hong Kong, Macao), Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama, Romania, Slovakia, South Africa, Switzerland, Sweden, Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland, Scotland), United States of America.**

³⁹⁰ **Czech Republic.**

³⁹¹ **China (Hong Kong).**

³⁹² **Malta, Monaco, Norway.**

³⁹³ Morocco is not a Party to the Hague Child Abduction Convention.

from both States, assisted by the Ministries of Justice of both countries and professional mediators, facilitated cross-border mediation in appropriate cases over a period of several years until France decided to withdraw from the programme in 2006. Scotland mentions the Hague network of liaison judges in this context of cross-border co-operation. The Swedish Central Authority reports that it has taken part in several international conferences organised by Reunite, a well-reputed British non-governmental organisation (NGO). At these conferences, participants exchanged experience of every aspect of child abduction. The Swedish Central Authority has also initiated co-operation with Reunite concerning mediation in cases under the Convention where children have been abducted from Sweden to the United Kingdom. Moreover, in November 2005 Sweden hosted an informal ministerial meeting with a small group of countries, aiming at improving the international co-operation regarding child abductions and related issues in non-Convention cases.

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.

265. Please see Annex IV for the contact details, websites, etc. of agencies involved in, or able to give information on, the enforcement of Hague return orders, as provided in reply to questions V.3. and VII.5.

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

266. In their additional comments relating to co-operation, several respondents underlined the importance of co-operation.³⁹⁴ Chile stated that it would be very convenient to have some co-operation between Central Authorities regarding the enforcement of return orders. Slovakia would welcome an exchange of information between the Central Authorities of the Contracting States to the Hague Convention by way of informal meetings of Central Authority personnel. Sweden refers to its co-operation with Reunite and the international conferences at both ministerial and operative level, in which the staff of the Swedish Central Authority has participated and where information concerning the international co-operation regarding child abductions and related issues in Convention and non-Convention cases was exchanged. The Swedish Central Authority considers such co-operation, as well as the continuing development and extension of networks enabled by those meetings, to be of crucial importance for the application of the Convention in practice.³⁹⁵

³⁹⁴ Chile, China (Hong Kong), Georgia, Malta, Mexico.

³⁹⁵ On the importance of such networking effects see further *infra*, para. 278.

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.
2. Who provides this training and education?

267. Many jurisdictions responded that there is no training available that is specifically focused on the *enforcement* of orders made under the 1980 Hague Convention.³⁹⁶ Some of them do however have some general training on the 1980 Convention,³⁹⁷ or on family matters in general,³⁹⁸ which in some cases also covers enforcement.³⁹⁹

268. In some responses, it is explicitly stated that there is no need for specific training on the enforcement of Hague orders because the lawyers, judges, police officers and social workers are highly skilled by virtue of their respective professions, and the efforts of all persons which might be involved in the enforcement of a return order fall within the normal exercise of their functions.⁴⁰⁰ In this context, in the response from Italy it is mentioned that all police stations have a Service of Minors, which deals with children and also has other institutional duties.

269. Many responses refer to training offered by the institutions related to the respective professions, such as Bar Associations or Law Societies offering training for lawyers.⁴⁰¹ For judges, depending on the way the judiciary is organised, Ministries of Justice and Magistrates' Associations, separately or jointly, offer training for judges and officers of the court⁴⁰² – sometimes through so-called Judges' Academies or Judicial Training Centres which are operated by them.

270. For professions other than judges and attorneys, such training is less frequent.⁴⁰³ In a number of jurisdictions, however, police and other law enforcement officers receive training on enforcement in family law, including Hague Convention matters by their respective authorities.⁴⁰⁴

³⁹⁶ **Bahamas, China (Macao), Denmark, Greece, Italy (Italy** responded that there is no training available on the enforcement of either Hague return orders or, more generally, the enforcement of family law decisions), **Switzerland, Turkey, United Kingdom (England & Wales, Isle of Man, Montserrat, Northern Ireland), United States of America.**

³⁹⁷ **Austria, Czech Republic, France, Netherlands** (for children's judges).

³⁹⁸ **Argentina, China (Macao), Lithuania** (for judges), **United Kingdom (Isle of Man, Scotland).**

³⁹⁹ **Austria, Argentina, China (Macao), Lithuania** (see previous note), **United Kingdom (Isle of Man), United States of America.**

⁴⁰⁰ **Bahamas, Czech Republic, Netherlands, United Kingdom (Isle of Man).**

⁴⁰¹ **Argentina, Austria, Canada (Manitoba), Chile** (Lawyers' College – *Colegio de Abogados*), **New Zealand** (Law Society), **Spain** (Lawyers' College – *Colegio de Abogados*), **United Kingdom (Scotland), United States of America.** The **United Kingdom (Isle of Man)** responded that some of the training is undertaken as part of the professional qualification required for the person to undertake such work; other specialist training is provided by the employer as required. In **Scotland**, interestingly, training for judges is also provided by bar associations.

⁴⁰² **Argentina:** Magistrates' Associations, **Austria:** Ministry of Justice, **Bulgaria:** Ministry of Justice (see also note 407), **Chile:** Judicial Academy, **China (Macao):** Legal and Judicial Training Centre, **Czech Republic:** Regional courts and Judicial Academy, **France:** *Ecole Nationale de la Magistrature*, **Latvia:** Ministry of Justice and Judicial Training Centre, **Lithuania:** Ministry of Justice and Judicial Training Centre, **Mexico:** Institute of Judicial Studies of the Superior Court of the Federal District, **Monaco:** French *Ecole Nationale de la Magistrature*, **Netherlands:** Council for the Judiciary, **Panama:** judicial college (an office inside the judiciary; this training is available only to appeal judges and other judges having experience and degrees in family law but it is also open to *pro bono* lawyers), **Slovakia:** Judicial Academy, **South Africa:** Justice College in conjunction with the Office of the Chief Family Advocate (Central Authority) and the State Solicitor, **Spain:** General Council of the Judiciary, **Sweden:** National Courts Administration, **United Kingdom (Isle of Man)** – see previous note, **Scotland:** National Judicial College), **United States of America:** National Judicial College.

⁴⁰³ In **New Zealand**, police officers, bailiffs and social workers are not provided with specific training on Hague Convention matters because only a small number of return orders needs to be enforced.

⁴⁰⁴ **Canada (Alberta, Manitoba, Quebec, Saskatchewan), Monaco, New Zealand, Spain, United Kingdom (Scotland), United States of America.**

271. Social workers, educators and child psychologists often receive training on Hague matters or custody matters in general through their respective authorities such as the competent Ministry, often in co-operation with the Central Authority.⁴⁰⁵ But it seems to be rather an exception than the rule for there to be training courses – e.g. for bailiffs – specifically on the enforcement of Hague return orders.⁴⁰⁶ In Austria, it is provided for those bailiffs who are part of the special task forces that exist at the Superior Courts of Appeal (*Oberlandesgerichte*) and deal with difficult enforcement issues in family matters. In Germany, where the training of the judiciary, including judges and officers of the court, falls within the responsibility of the states, the Federal Ministry of Justice, in co-operation with the German Bailiff's Association and the German states, has organised two seminars for bailiffs on the enforcement of orders relating to domestic violence, Hague return orders and contact orders in 2005 and 2006.

272. Others mention individual seminars or conferences that have taken place,⁴⁰⁷ or indicate more generally that professionals in their jurisdiction do attend national and international conferences and seminars covering various areas of family law including enforcement.⁴⁰⁸ It was pointed out that such events can be organised by Ministries of Justice and / or of Foreign Affairs, the police, social welfare authorities, international organisations (both intergovernmental and non-governmental), universities, law schools and private training companies.⁴⁰⁹

273. In many jurisdictions, the Central Authority plays an active role in providing specific training on the 1980 Convention or participating in training sessions organised by the other bodies mentioned earlier.⁴¹⁰ The French Central Authority mentioned in particular that, where its staff members participate in training given to members of the bar and lawyers in training, they always highlight the importance of favouring voluntary returns and amicable settlements between the parents, wherever possible.

274. Most of the training is directed to the judiciary and to attorneys. Law enforcement officers, social workers and other professionals who might become involved in Hague return proceedings rarely receive training on the enforcement of Hague return orders. It is worth mentioning, though, that in a few jurisdictions, there even exists some training for other professions that might be involved in the enforcement of return orders: In Norway and Sweden, for example, the Central Authority provides training to officers working, or shortly to be posted, at diplomatic and consular missions abroad.

⁴⁰⁵ **Canada (Manitoba), China (Hong Kong), Monaco, Slovakia, Spain.** In **Hong Kong**, refresher training for social workers of the Family and Child Protective Services Units on "Handling International Child Abduction Cases" is also conducted on need basis. The trainers include local and overseas trainers with experience in the subject.

⁴⁰⁶ Such training does exist in **Austria, Germany** and the **United States of America**.

⁴⁰⁷ **Austria, Bulgaria, Canada (Quebec), Georgia, Latvia, Sweden, Turkey, United Kingdom (Scotland).** **Austria** mentions a seminar for 180 practicing lawyers that dealt with family law aspects including international child abductions. For a detailed description of a series of seminars held in Bulgaria see *infra* under 3. In **Canada (Quebec)** and **Germany**, individual seminars providing training for certified mediators on the Convention (and in **Quebec** also on preventive measures) were held.

⁴⁰⁸ **Austria, Argentina, China (Hong Kong), Malta, Mexico, Panama, Spain** (referring to international events which are only for judges, held either in the EU context, on a bilateral basis or with Hispano-American jurisdictions).

⁴⁰⁹ **Argentina, Canada (Saskatchewan), China (Hong Kong), Finland, France, Mexico, Norway, Panama, Spain, Sweden.** In **Germany**, the training of judges is a matter for the states. The Federal Ministry of Justice, however (which is not the Central Authority), organises two training sessions per year for specialised judges having concentrated jurisdiction for child abduction matters. This is sometimes done in co-operation with one or more of the German states. Central Authority staff equally participate in these seminars. Lecturers may include specialists such as child psychologists.

⁴¹⁰ **Canada (Alberta, Manitoba, Quebec, Saskatchewan), China (Hong Kong), France, Germany, Norway, Slovakia, South Africa, Sweden, Switzerland, United Kingdom (Scotland), United States of America.** In the United States, the National Center for Missing and Exploited Children (NCMEC) (Central Authority for abductions to the United States) along with the State Department (Central Authority for abductions from the United States), provides training to U.S. law enforcement officials on missing children matters, including training on handling recovery and reunification of children with left behind parents.

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?

275. Some responded that training on the 1980 Convention occurs annually:⁴¹¹ This applies in particular where such training is part of initial training courses required to exercise a profession, and / or of training which is part of the continuing education for certain professionals: Examples are the annual inclusion in the Bar Admissions course materials of the Law Society of Manitoba (Canada), refresher courses given to senior police officers annually in Canada (Saskatchewan), the national courses for judges offered in France, Spain and Sweden. In some cases, such regular training is even more frequent: In Canada, police recruits in Saskatchewan are trained semi-annually, and in Quebec, four to five times a year, training is given to new Montreal police sergeant detectives with respect to the Hague Convention and the role of the Central Authority for Quebec in collaboration with the Missing Children's Network Canada and the Royal Canadian Mounted Police. In Lithuania, training for judges on family law including international Conventions like the 1980 Hague Convention, occurs usually 2-3 times a year. In Spain, the different lawyers' colleges regularly organise courses, more often in bigger cities than in smaller towns. In particular, the college in Madrid has been organising such courses for ten years, with an average of ten courses per year, for lawyers and also police.⁴¹² In the United States of America, training at NCMEC⁴¹³ for law enforcement officers occurs regularly, although it is not specifically geared to the enforcement of Hague orders. In some responses, the responding body (National Organ or Central Authority) indicated that they were not aware of training events other than those in which Central Authority staff themselves were involved, nor of training for certain groups of professionals such as social workers.⁴¹⁴

276. In several jurisdictions there is no *regular* training on the operation of the Hague Convention in general, or on the enforcement of return orders in particular.⁴¹⁵ This means in most cases that training events are nevertheless held on a recurring basis but *ad hoc* rather than following a pre-planned time schedule. States with and without regular training events mentioned that such training is given upon request or whenever an opportunity or a need arises, at irregular intervals.⁴¹⁶ This last statement was often made in jurisdictions where the training takes the form of seminars or conferences, and some gave indications that such events tend to take place once, twice or three times a year.⁴¹⁷ The training often takes the form of a single lecture or a seminar including lectures from different perspectives, accompanied by complementary information documents.⁴¹⁸ In the response from Slovakia, attendance at working meetings of the consular department of the Ministry of Foreign Affairs of the Slovak Republic was mentioned as a form of training.

277. Often Central Authority staff and / or other professionals familiar with the 1980 Convention participate in seminars or training sessions for other professionals, either as "expert attendants" who enrich the discussion, and / or as lecturers. So even where there is no systematic joint programme for different professions to be trained together, the

⁴¹¹ **Canada (Manitoba, Saskatchewan** – for police recruits; training for the legal professions occurs less frequently), **Panama, Spain**.

⁴¹² **Spain** mentioned also courses in virtual form over the Internet.

⁴¹³ See *supra*, note 410.

⁴¹⁴ **Chile, Slovakia, United States of America**.

⁴¹⁵ **Argentina, Canada (Quebec), Finland, Georgia, Latvia, Mexico, South Africa**.

⁴¹⁶ **Canada (Alberta, Manitoba, Quebec), Latvia, Lithuania, South Africa**.

⁴¹⁷ **China (Hong Kong, 1-2 times a year), Germany** (at least twice a year; see *supra*, note 409), **Lithuania** (2-3 times a year), **Panama** (once a year). For **New Zealand**, on the other hand, it was indicated that the New Zealand Law Society, the body responsible for the training of the legal profession, had organised a series of seminars that focused on the 1980 Convention throughout New Zealand in 2003, and that previous seminars were conducted in 1995. The very low number of cases occurring in New Zealand explains this rather long distance between the two series.

⁴¹⁸ **Bulgaria, Canada (Alberta, Manitoba, Quebec), Chile, China (Hong Kong), Finland, France, Germany, Latvia, Lithuania, Mexico, South Africa, Spain**.

different professionals involved in the application of the 1980 Convention might come together at conferences or seminars.

278. In some States, even joint training for different professional group exists.⁴¹⁹ In Panama and Sweden, Central Authority personnel and judges are sometimes trained together. In Sweden, a number of informal meetings have also been arranged by the Central Authority with different groups of professionals, *inter alia* social workers and police officers from Interpol. Slovakia mentioned working meetings including consultation in individual working groups. An important benefit of this joint training in its different forms is that it provides an opportunity for networking between professionals of different professions that might be involved in the enforcement of Hague return orders, so that personal contacts are already in place when a case arises.⁴²⁰ In the response from Sweden, it was stressed that the daily work at the Central Authority includes a lot of communication with professionals in the field, and that the development and use of informal networks has strategic importance for the sharing of knowledge about the Hague Convention. A programme described in the response from Bulgaria illustrates⁴²¹ how such networking can develop: The 1980 Convention entered into force for Bulgaria on 1 August 2003. In June 2003 and March 2004, the Bulgarian Ministry of Justice organised two seminars with different partners: a first one⁴²² on the Hague Child Abduction Convention and the European Custody Convention, and a second one⁴²³ covering these two Conventions as well as the 1996 Hague Child Protection Convention, the Brussels II Regulation and the European Convention on Contact concerning children. Presentations on the legal instruments were combined with practical cases to be discussed in groups. The seminars were attended by 35 and 50 participants, respectively, including Central Authority personnel and other experts from the Ministry of Justice, the judges of the City Court of Sofia (which is the sole court to hear cases under the 1980 Convention in Bulgaria) and the Sofia Court of Appeal, the regional and municipal court of Sofia, public prosecutors from Sofia, representatives of the Ministry of the Interior – Directorate “National Police Service”, experts from the State Agency for Child Protection and the State Agency of Social Assistance as well as the representatives of the Ministry of Foreign Affairs – Directorate “Consular Relations”. Members of the Permanent Bureau lectured at both seminars. At the second seminar, German judges and speakers from the Bulgarian Ministry of Justice joined them. A 6-day study tour for experts from the Ministry of Justice, judges of the Sofia City Court and Sofia Court of Appeal, the public prosecutor of Sofia, a police expert and an expert from the State Agency for Child Protection to Germany, supplemented the first seminar. The group visited child protection services, the German Central Authority the German branch of the International Social Service and the Cologne Court of Appeal.

279. In addition to organising training events, competent authorities – often Central Authorities – prepare information material for the professions involved and sometimes

⁴¹⁹ **Bulgaria, Finland, Panama, Sweden.** On the other hand, **China (Hong Kong), Lithuania, New Zealand** and the **United Kingdom (Isle of Man, Scotland)** indicated that no joint training for different professional groups has taken place so far.

⁴²⁰ *E.g.* often judges, practicing lawyers (attorneys), Central Authority staff, ministerial officials, social workers and psychologists deliver lectures to (present and future) judges, officers of the court and police. In **South Africa**, the Department of Social Development and Interpol are also involved. In **Finland**, a multiprofessional group was created in 1998, consisting of nominated contact persons from different agencies (*e.g.* from the Ministry for Foreign Affairs, the Ministry of Justice, the Social Welfare Authority, the police, the Border Guard, the mental health care, enforcement officers etc.). It meets approximately twice a year to discuss abduction matters, and its members have an important role in securing the professional skills in these issues in their respective sectors.

⁴²¹ Other countries such as **Georgia, Latvia, Panama** and **Turkey** equally mentioned that they have organised seminars in co-operation with partners such as NGOs (*e.g.* German Foundation on International Legal Co-operation – IRZ Foundation) and intergovernmental organisations (*e.g.* the European Union’s TAIEX programme, UNICEF, UNDP) and others, and / or that such seminars are planned for the future. These seminars are often co-hosted by the international or foreign partner and the Ministry of Justice, the Judges’ Training Centre and / or Ministry of Foreign Affairs of the receiving States and bring together different professionals involved in the implementation and application of the 1980 Convention such as Central Authority staff, judges, public prosecutors, social workers, police etc.

⁴²² This was in co-operation with the German Foundation on International Legal Co-operation (IRZ Foundation).

⁴²³ This was within the framework of the TAIEX Programme of the European Union.

also for the general public,⁴²⁴ handbooks and sometimes also other publications, e.g. informing about a Special Commission or a Judges' Seminar organised by the Permanent Bureau.⁴²⁵ In responses from jurisdictions in the United Kingdom it was mentioned that various materials are also available from the United Kingdom's leading child abduction charity Reunite, through their help line. Reference was also made to the material and assistance provided by the Permanent Bureau, such as the Convention itself, the Explanatory Report by Elisa Pérez-Vera, the Special Commissions on the operation of the Convention and the resulting recommendations and conclusions, the Guides to Good Practice, Judges' Seminars, as well as to other information publicly available such as scientific articles in specialised reviews.⁴²⁶ For guidelines and practice directives for professionals involved in Hague return proceedings that have been developed in certain jurisdictions, see above under question I.3.

280. In two responses from Scandinavia it was mentioned that information and training on the 1980 Hague Convention is already provided at the university level, and that this is linked to actual practice: The Norwegian Central Authority frequently provides training to student organisations at the faculty of law at the university of Oslo that are providing free legal aid. The Swedish Central Authority has a long-standing and close cooperation with Professor Maarit Jäntere-Jareborg and her team at the Faculty of Private International Law at the University of Uppsala. Law students specialised in private international law at the university of Uppsala and other universities regularly spend internships at the Central Authority.

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?

281. Several respondents underlined the need for, and the importance of, specialised training and education in the facilitation of Hague Child Abduction matters.⁴²⁷ Some of them referred to all professionals involved in the field,⁴²⁸ others in particular to judges⁴²⁹ or Central Authority personnel.⁴³⁰ It was suggested that such training should be intensified and offered more frequently.⁴³¹ In other responses, some prerequisites for the availability and success of such training were identified: In general, the existence of a "culture of training" in the jurisdiction concerned⁴³² will be beneficial for the availability and acceptance of such training. Moreover, in Germany it was experienced that the concentration of jurisdiction from over 620 family courts to 22 at first instance (and also at the appeal level) had a strong impact on the interest of the judges concerned in training on the Hague Child Abduction Convention. As long as a judge had to expect having to deal with a Hague return case only once every few years, the interest in time-consuming training on such an "exotic" topic was low, but after concentration each of the competent courts has to deal with about 5-8 cases per year, which has considerably increased the request for training on these matters by the judges concerned.

282. South Africa, which joined the 1980 Convention in 1997, stated that it would be helpful for the various Central Authorities to share and exchange their views regarding the interpretation and application of the Convention. This comment illustrates how important it is to hold Special Commissions on the operation of the Convention at regular intervals. Such meetings were held in 1989, 1993, 1997, 2001 and 2002. In the

⁴²⁴ In **Canada (Manitoba)**, the Director of the Central Authority has written a number of articles for the legal profession, the judiciary and the general public with respect to parental child abductions generally, and in particular, cases falling under the Hague Abduction Convention. The **Swiss** Central Authority prepares additions to and updates of "aides-mémoire", which are currently available at < [www.ofj.admin.ch/protection des enfants](http://www.ofj.admin.ch/protection%20des%20enfants) >.

⁴²⁵ **Switzerland.**

⁴²⁶ **Mexico, Netherlands, Switzerland.**

⁴²⁷ **Bahamas, Canada (Quebec), Chile, Germany, Greece, Spain.**

⁴²⁸ **Canada (Quebec), Chile, Spain.**

⁴²⁹ **Greece.**

⁴³⁰ **Bahamas, Slovakia.**

⁴³¹ **Mexico, Spain.**

⁴³² **Chile.**

beginning, they were almost exclusively attended by Central Authority representatives, which were later joined by judges, sometimes lawyers, and ministerial officials. However, the South African proposal goes further: It is suggested that such exchange of views among Central Authorities could develop into a training programme aiming at ultimately harmonising the manner in which the various Central Authorities execute their mandate.

283. In a similar vein, the Bahamas, which have had very few child abduction cases where the child was ordered to be returned so far, stressed that specialised training courses providing information on the experiences of other countries, and the manner in which they have addressed challenges to enforcement, could be very beneficial.

284. In the response from China (Hong Kong), reference was made to the seminars on the 1980 Convention for judges and other professionals that the Permanent Bureau had (co.)organised or facilitated in Europe and North America in the past,⁴³³ and stated an interest for such seminars to be held in the Asia-Pacific region.

285. Slovakia expressed the wish for a working group of Central Authorities of European Contracting States in order to exchange knowledge and information concerning international child abduction. In this context, it may be useful to mention that the Permanent Bureau of the Hague Conference, resources permitting, stands ready to provide support for any initiatives undertaken by Contracting States in this respect, and greatly appreciates to be kept informed, or involved, as appropriate, in such local or regional initiatives. An example is provided by the Working Group of European (current and future) Contracting States to the 1993 Hague Convention on Intercountry Adoption that was established without the intervention of the Permanent Bureau but is now regularly attended by one of its representatives. Similarly, some of the seminars mentioned above, which started as *ad hoc* binational events between Germany and France, and Germany and the United States of America, and later opened up to participants from a few other countries speaking German and French or English, respectively, were requested by Germany and France, or Germany and the United States, respectively, and funded by the States represented. The Permanent Bureau acted as a facilitator, providing logistical support and assistance in establishing the programme.

⁴³³ These seminars include several seminars held in the **Netherlands**: a seminar funded by **France** and **Germany** for judges from those States in 2000 which was also open to some participants from **Italy** and the **Netherlands**; another seminar in 2001 which was mainly funded by, and intended for participants from, **France, Germany, the United Kingdom** and the **United States of America** and was also open to some participants from the **Netherlands** and **Sweden**; another seminar in 2003 which was mainly funded by, and intended for participants from, **Germany, the United Kingdom** and the **United States of America** and was also open to some participants from **Austria, France, Israel, the Netherlands, Sweden, Switzerland and Turkey**; another seminar in 2005 with participants from **Argentina, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, United States of America** and **Venezuela**. Moreover, a seminar was held in 2004 in **Mexico** with participants from **Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, the United States of America, Uruguay** and **Venezuela**. The participating States and sometimes some other sponsors funded the seminars; none was funded by the Permanent Bureau.

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.
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)?

286. Argentina, Bulgaria, Chile, Latvia, Lithuania, Mexico and Monaco responded that they have not yet developed information material concerning the enforcement of return orders.

287. Research conducted by the Permanent Bureau on the websites of the Central Authorities (and sometimes other government websites) of all Contracting States shows that some of these websites do contain information specifically on the enforcement of return orders. The links to such specific information are indicated below.⁴³⁴ Other Central Authority or government websites contain general information on the Convention but do not explicitly address enforcement.⁴³⁵ In several responses, it was mentioned that application forms for Hague return proceedings are available online.⁴³⁶ Printed

⁴³⁴ Such information was found on the websites of the Central Authorities (or sometimes other authorities) of **Austria**, at < http://www.justiz.gv.at/cms_upload/docs/Leitfaden.pdf > (German), **Canada (Federal Central Authority)**, at < www.justice.gc.ca/en/ps/pad/reports/2001-FCY-8E.pdf >, **Canada (Manitoba)**, at < www.gov.mb.ca/justice/family/familyindex.html > (English) and < www.gov.mb.ca/justice/family/familyindex.fr.html > (French), **China (Hong Kong)**, at < www.doi.gov.hk/childabduct/english/abduct_judgproced.html > (Chinese, English), **Finland**, at < www.om.fi/esitteet/9439.htm > in section "Lapsen huolto" / "Vårdnad av barn" / "Custody of Children" (Finnish, Swedish, English), **Germany**, on p. 9 of a brochure available at < www.bundeszentralregister.de/hkue_esue/hkue_esue.pdf/kindesentfuehrung.pdf > (German), **Malta**, on the website of the Ministry for the Family and Social Solidarity at < www.msp.gov.mt/services/sif/service_info.asp?cluster=socprot&serviceid=8 >, **Sri Lanka**, at < [www.justiceministry.gov.lk/International_mutual/\(A\)%20International%20Mutual%20Assistance.htm](http://www.justiceministry.gov.lk/International_mutual/(A)%20International%20Mutual%20Assistance.htm) >, **Sweden**, in a brochure from 1999 at < www.regeringen.se/content/1/c6/04/11/59/23af619a.pdf > under "verkställa, verkställighet", **United Kingdom (Isle of Man)**, at < www.gov.im/government/offices/attorney.xml > in the "Child Abduction Information" at p. 5, **United Kingdom (Northern Ireland)**, at < www.courtsni.gov.uk/en-GB/Services/Child+Abduction/?UserPref=culture%5Een-GB > under "Operation" (basic reference to contempt of court), **United Kingdom (Scotland)**, at < www.scotland.gov.uk/Topics/Justice/18533/13577 > under "If your child has been ...", **United States of America**, at < www.travel.state.gov/family/abduction/resources/resources_542.html > and < www.ncjrs.gov/pdffiles1/ojdp/189382.pdf >, *i.a.* on pp. 9-11, 13-14, 16-17, 27 *et seq.*

⁴³⁵ *E.g.* **Argentina**, **Australia** (at < <http://www.ag.gov.au/childabduction> > – main page on child abduction, < <http://www.ag.gov.au/agd/WWW/ChildAbduction.nsf/Page/Home> > and < <http://www.ag.gov.au/agd/WWW/agdhome.nsf/Page/RWP540B93B11E16E34BCA25707600221028> > (Family Law Tips Card No 8)), **Belgium** (at < <http://www.just.fgov.be> > -> section on international child abduction), **Belize** (at < www.belize.gov.bz/cabinet/d_balderamos_garcia/welcome.shtml >), **Canada** (at < www.voyage.gc.ca >), **Czech Republic** (at < www.umpod.cz >), **Denmark** (at < <http://www.boernebortfoerelser.dk> >), **France** (at < <http://www.enlevement-parental.justice.gouv.fr/haye.html> >), **Greece** (at < <http://www.ministryofjustice.gr/eu2003/pj-pdf/kef10.pdf> >), **Iceland** (at < <http://www.domsmalaraduneyti.is> > in Icelandic and at < <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/94> > in English), **Italy** (at < http://www.giustizia.it/minori/sottrazione/conv_aspetti_civili.htm > and < http://www.giustizia.it/minori/autorita_conv.htm >), **Netherlands** (at < http://www.justitie.nl/onderwerpen/jeugd/internationale_kinderontvoering/index.aspx >), **New Zealand** (at < <http://www.justice.govt.nz/family/what-familycourt-does/children/hague-convention.asp> >), **Norway** (at < <http://www.dep.no/id/norsk/tema/barnogunge/p30005272/bn.html> >), **Panama** (at < <http://www.mire.gob.pa/info.php?doc=sustraccion%20internacional%20de%20menores> >), **Romania** (at < http://www.just.ro/files/cooperare_judiciara_internationala/ghid_civil/Guide%20civil%20cooperation%202006EN.doc >), **South Africa** (at < <http://www.doi.gov.za/hague/main.htm> >), **Spain** (at < http://www.justicia.es/servlet/Satellite?cid=1068106059748&pagename=Portal_del_Derecho%2FAtCiudadanoPrincipaloPrincipalo%2FTempAtCiudadanoD&c=AtCiudadanoPrincipalo >), **Switzerland** (at < http://www.ofi.admin.ch/bj/fr/home/themen/gesellschaft/internationale_kindesentfuehrung.html >), **United Kingdom (Scotland)** – at < <http://www.scotcourts.gov.uk/courtsadmin/abduction.asp> >. Where no Internet address is mentioned in this note, the information is posted on the website of the Central Authority. For the Internet addresses see < www.hcch.net >. For further websites giving information, see *infra*, Annex IV.

⁴³⁶ **Austria**, **Germany**, **Norway**.

information material on the 1980 Convention in general is also available in a number of jurisdictions.⁴³⁷

288. In most cases, the information material is being prepared by the Central Authority, sometimes in co-operation with others. In Denmark, the co-operation group formed by the Central Authority, the Ministry of Foreign Affairs, the police and the Ministry of Social Affairs has set up a website on child abduction in Danish and English.⁴³⁸ In Finland, a brochure containing information on international child abduction in general (containing also a section on enforcement) was prepared in co-operation between the Ministry of Foreign Affairs, the Ministry of Justice (Central Authority), the Ministry of Social Affairs and Health and the Association for Abducted Children. It is available on the Internet⁴³⁹ in Finnish, Swedish and English; summaries are available in Russian and French.

289. There are also a few examples of information material prepared without the formal involvement of the Central Authority: The Canadian Department of Foreign Affairs and International Trade has published the information booklet "International Child Abductions: A Manual for Parents", in English and French. It is available in printed form and over the Internet⁴⁴⁰ and gives contact information for all provincial Central Authorities. In some provinces, e.g. in Saskatchewan, it is distributed to the courts, the provincial Department of Justice office, and some other government offices. In New Zealand, while the Ministry of Justice is the Central Authority, the Department of Internal Affairs has published a pamphlet with general information for parents on international child abduction in 1997. The New Zealand Family Court website⁴⁴¹ also contains information on the 1980 Convention. In the United Kingdom (Northern Ireland), information on the enforcement of return orders, supplied by the Policy and Legislation Division of the Northern Ireland Court Service, can be found on the Court Service website.⁴⁴²

290. Some respondents also provided examples illustrating the distribution of information. The Central Authority of Quebec (Canada) has distributed more than 5,000 copies of its flyer "International Child Abduction – The Hague Convention on the Civil Aspects of International Child Abduction",⁴⁴³ containing information on the 1980 Hague Convention and the role of the Central Authority for Quebec. Recipients included *Sûreté du Québec*, Montreal and Royal Canadian Mounted Police officers, Directors of Youth Protection, Youth Centres, women's shelters, foreign embassies, consulates in Quebec, lawyers with the office of the Attorney General of Quebec, members of a Quebec association of family lawyers, legal aid offices in Quebec, etc. A few times a year, special days are organised as part of the "Our Missing Children" programme in shopping centres

⁴³⁷ **Bahamas**: Central Authority's International Child Abduction Procedures Manual, containing an outline of the procedures that must be followed by the applicant parent before the application can be further expedited, an outline of the steps to be taken by the Central Authority in dealing with an application for the return of the abducted child, and a copy of the relevant legislation and Supreme Court Rules that must be followed by the applicant parent and respondent when a return order is sought; **Canada (Manitoba)**: information booklet "Family Law in Manitoba", containing general information about a wide range of family law issues, including enforcement of family court orders and proceedings pursuant to the Hague Abduction Convention (with funding support from Justice Canada); **Canada (Quebec)**: Central Authority's flyer "International Child Abduction – The Hague Convention on the Civil Aspects of International Child Abduction"; **Germany**: Central Authority's brochure on international child abduction and contact (*Internationale Kindesentführung, Hinweise zur Rückführung aus dem Ausland und zur Durchsetzung des Umgangsrechts im Ausland*); **Netherlands**: Central Authority's brochure on child abduction (in Dutch and English); **Norway**: circular letter regarding international child abduction (in Norwegian); **Slovakia**: brochure on the activities of the Central Authority, available at the local social offices which provide information and advice in co-operation with the Central Authority and the Ministry of Labour, Social Affairs and Family; **South Africa**: brochure; **United Kingdom (Isle of Man)**: Central Authority's leaflet regarding Hague Convention proceedings; **United Kingdom (Scotland)**: Central Authority's flyer produced in line with the recommendation of the Guide to Good Practice for Central Authorities and aiming to make members of the public and solicitors aware of the 1980 Hague Convention and the role of the Central Authority.

⁴³⁸ < www.boernebortfoerelser.dk >.

⁴³⁹ See *supra*, note 434.

⁴⁴⁰ Available at < www.voyage.qc.ca/main/pubs_menu-en.asp#5 >.

⁴⁴¹ Available at < <http://www.justice.govt.nz/family/children/hagueconvention.html> >.

⁴⁴² Available at < <http://www.courtsni.gov.uk/enGB/Services/Child+Abduction> >.

⁴⁴³ See *supra*, note 437.

and McDonald's restaurants. Information is provided and identification "passports" are made for children. The Central Authority sometimes attends to provide information on the Hague Convention and on prevention.

291. In most cases, the information is available only in the language(s) of the country providing it.⁴⁴⁴ Some States, however, provide all or part of the information also in other languages – mostly in English.⁴⁴⁵ The German Central Authority, while providing general information on its website only in German, has prepared translations of the application forms under the 1980 Convention in 16 languages.⁴⁴⁶ In this context it is of interest that the Scottish Central Authority mentioned that general information is available only in English, but that the Central Authority would probably be able to fund translations if needed.

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?

292. The Czech Republic and the Netherlands responded that 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. Mexico and Slovakia point out that it is necessary to increase the knowledge of individuals on child abduction cases and the 1980 Convention, including by way of all accessible mass media.

4. Please provide any other information which may be relevant to the issue of the enforcement of Hague return orders.

293. Additional information provided by China (Hong Kong) under this heading has been included in Annex IV. No further comments were made.

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.

294. Please see Annex IV for the contact details, websites, etc. of agencies involved in, or able to give information on, the enforcement of Hague return orders, as provided in reply to questions V.3. and VII.5.

6. Have you any general comments to make regarding the enforcement of Hague return orders?

295. See above on page 19 *et seq.*

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.

296. A number of jurisdictions indicated recent or forthcoming changes in their legislation and / or practice that could affect the operation of the Hague Child Abduction

⁴⁴⁴ The following plurilingual jurisdictions have information on child abduction available in their official languages: **Belgium**: Dutch, French, German; **Canada**: English, French; **China (Hong Kong)**: Chinese, English; **Malta**: English, Maltese; **Switzerland**: French, German, Italian.

⁴⁴⁵ **Argentina**: Spanish, English; **Colombia**: brief information in Spanish, English, French at < <http://www.bienestarfamiliar.gov.co/ingles/como3.asp> >; **Czech Republic**: Czech, English; **Denmark**: Danish, English; **Estonia**: Estonian, English; **Finland**: Finnish, Swedish, English; **Greece**: Greek, English; **Iceland**: Icelandic, English; **Italy**: Italian, English, French at < http://www.giustizia.it/minori/sottrazione/conv_aspetti_civili.htm >; **Netherlands**: Dutch, English; **Norway**: Norwegian, English; **Romania**: Romanian, English, French; **Sweden**: Swedish, English; **United States of America**: English, Spanish.

⁴⁴⁶ Website of the **German** Central Authority at < www.bundeszentralregister.de >, containing application forms in Danish, Dutch, English, French, Greek, Hungarian, Italian, Macedonian, Norwegian, Polish, Portuguese, Romanian, Serbo-Croatian, Spanish, Swedish and Turkish.

Convention: It was pointed out that for the Member States of the European Community, the revised Brussels II Regulation which became applicable on 1 March 2005, modifies the application of the 1980 Convention between EU Member States.⁴⁴⁷ With regard to enforcement, there are two important changes. One of them concerns Hague return proceedings. Where return is refused under Article 13 of the Convention, the court that refused the return of the child to another EU Member State has to transmit a copy of the decision and the file to the competent authorities in the State of habitual residence of the child within a month from the date of the decision. The court there has to invite the parties (the parents) to file applications concerning custody within three months following service. If no application is received within that period, the file will be closed. If custody proceedings take place in this State (of the child's former habitual residence), however, and custody is granted to the left-behind parent in this State, this order will be immediately enforceable in the State where the child is present and where return was refused earlier in Hague proceedings. No exequatur is required. Germany revoked its Act implementing the 1980 Convention and the European Custody Convention on this occasion and replaced it by a new Act on International Family Law Proceedings.⁴⁴⁸ Romania indicated that Law No 369/2004⁴⁴⁹ concerning the application of the 1980 Hague Convention entered into force on 30 December 2004. It contains certain special provisions on enforcement, which are supplemented by the general rules contained in the Code of Civil Procedure. In New Zealand, in July 2005 the Care of Children Act replaced the Guardianship Act 1968 and the Guardianship Amendment Act 1991, which had applied to applications and proceedings under the 1980 Convention until that date.⁴⁵⁰ The provisions in the Care of Children Act relating to proceedings under the 1980 Convention are closely based on those in the Guardianship Act. In Sweden, on 1 July 2006 a new law entered into force that moved all Hague return proceedings from the administrative courts to the civil courts. In this report, the situation under the new law was taken into account for all four States. Turkey responded that a draft law on the implementation of the 1980 Convention has been submitted to Parliament for approval. In Latvia, work on the improvement of the norms regulating international civil proceedings, which would also concern the 1980 Convention, is being conducted. Switzerland is planning a unification of civil procedures between 2008 and 2010. Moreover, attention is drawn to the fact that those EU Member States that are not yet Parties⁴⁵¹ to the 1996 Hague Child Protection Convention are likely to ratify the Convention, which supplements the 1980 Convention, in the near future.⁴⁵²

⁴⁴⁷ See the responses by **Germany, Spain and Sweden**.

⁴⁴⁸ Federal Gazette (BGBl) I 2005, p. 162.

⁴⁴⁹ Published in the Official Monitor No 888 of 29 September 2004.

⁴⁵⁰ The Care of Children Act 2004, Guardianship Act 1968 and Guardianship Amendment Act 1991 can be viewed at < <http://www.legislation.govt.nz/> >.

⁴⁵¹ This includes **Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Spain, Sweden** and the **United Kingdom**. The **Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia and Slovenia** are already Parties to the 1996 Convention.

⁴⁵² See the response by **Sweden**.

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.

297. Hague return orders are domestic orders, and Chapters I-VII of the questionnaire explored how they are enforced under domestic enforcement law. Chapter VIII builds on those previous Chapters. The first question is not directly related with the 1980 Convention; it simply aims at identifying differences in the tools provided by domestic enforcement law when it comes to enforcing a contact order rather than a return order. Differences may exist due to the fact that the enforcement of a return order is a one-time event in a situation of urgency which needs to be remedied quickly while the enforcement of a contact order is normally a recurring issue for which a workable routine should be developed.

298. In a number of jurisdictions the same rules as described above for the enforcement of return orders also apply to contact orders.⁴⁵³ In others, there are differences:

299. In the Netherlands, courts have different views as to whether the rules governing the enforcement of custody orders and Hague return orders also apply to contact orders.

300. In some jurisdictions, certain particularly rigid measures available for enforcing a return order are excluded for the enforcement of a contact order, or the procedure as such is "softer" than that available for enforcing a return order, or in addition to the coercive measures available for enforcing a return order, additional, softer measures are available concerning contact:

301. France underlined that except for criminal sanctions (it is an offence not to present the child for a period of contact) there are no coercive measures available in France to ensure the respect of a right of contact of a parent with a child. For the enforcement of return orders, however, the court may order police assistance to accompany the applicant and fetch the child, and / or impose a fine on the abducting parent for each day of non-compliance. Similarly, in Luxembourg, where fines and the use of coercive force by the police are available for the enforcement of a return order, such force is not used for enforcing a contact order, and the applicant is invited to bring criminal proceedings against the other parent for not having presented the child for contact. In Germany, the coercive measures available for the enforcement of return orders are physical force (to be used against the abductor and / or the child), fine and imprisonment. For the purposes of enforcing a contact order, the use of physical force against the child is not permitted. In the Netherlands, contact orders, unlike return orders, are in practice never enforced with the assistance of the police. In Greece, Article 950 of the Code of Civil Procedure provides that return *has to be* ordered under the penalty of a fine of up to EUR 5,900 or imprisonment or both *ex officio* while a contact order "*may*" only threaten fine and imprisonment for the case of non-compliance.

302. In Sweden, before the court⁴⁵⁴ orders enforcement of a contact order, it can request that a social secretary or other suitable person works for a voluntary delivery of the child. However, the maximum timeframe allowed for this is two weeks. This rule also applies to return orders. The court may, if there are special reasons, when making a contact order also place a fine on a parent in order to secure that he or she will entrust the other parent with the child. It can also, if there are no other possibilities of enforcing the contact order and the child is considered to have a specifically strong need of contact with the parent, decide that the child shall be collected by the police – which is the common way of enforcing a return order but rather exceptional as far as contact orders

⁴⁵³ **Bulgaria, Canada (Quebec), Chile, Denmark** (but see also *infra*, para. 317), **Italy, Latvia, Lithuania, Mexico, Monaco, Panama, Slovakia, South Africa, United Kingdom (Isle of Man, Scotland), United States of America.**

⁴⁵⁴ Some respondents, e.g. from **Luxembourg** and **Sweden**, mentioned that different courts would have jurisdiction for making and enforcing return orders and for enforcing foreign contact orders on the one hand and for making and enforcing domestic contact orders on the other hand.

are concerned. If the court considers it necessary in order for the child to be surrendered, the child can be temporarily put under care. However, if the child has reached the age of twelve, or shows signs of having reached the average level of maturity of a twelve-year old, the contact order cannot be enforced if the child opposes it, unless the court finds an enforcement to be in the child's best interests. Moreover, the court can refuse enforcement if it is obvious that the circumstances of the case are different from what they were at the time when the court issued the contact order. In such a situation the best interests of the child would require that the court tries the case again.

303. In New Zealand, a warrant to uplift the child is available to enforce both return and contact orders, and since 2005 the police are entitled by law (*i.e.* without the need for the court to order this specifically) to use reasonable force against anyone including the child, but in contact cases a warrant would only be used extremely rarely and as a last resort. Moreover, when determining whether or how to enforce a contact order, the New Zealand court must take into account the principle that decisions affecting the child should be made and implemented within a timeframe that is appropriate to the child's sense of time (section 4(5)(a) of the Care of Children Act).

304. In other jurisdictions, it seems that all or at least most of the measures for enforcing a return order are also available for contact orders but additional measures are available with a view to enforcing a contact order:

305. In Canada (Alberta), the enforcement of contact orders takes place under part 8 of the Domestic Relations Act which applies to domestic and foreign orders. Coercive measures are possible under these provisions. In Alberta and Saskatchewan, access enforcement orders given upon application can take the following forms:

- grant compensatory access to the parent entitled to contact;
- require the custodial parent to provide security for the performance of the obligation to give the applicant access to the child;
- order the reimbursement of expenses (Saskatchewan only);
- appoint a mediator to assist the parties in resolving access issues;
- order parties to attend counselling / courses (Alberta only);
- make or vary a custody or access order;
- direct a sheriff or police officer to locate, apprehend and deliver a child to a person specified by the court in order to give effect to the applicant's rights of access;
- upon application, find the custodial parent in contempt of the access order; penalties include fines, imprisonment, or both.

306. Legislation also exists in Manitoba that may be used by a foreign parent to enforce an existing access order. Manitoba's Child Custody Enforcement Act, C.C.S.M. c. C360⁴⁵⁵ (like other provincial / territorial child custody enforcement legislation in Canada) provides a variety of means to ensure compliance with custody and access orders. The provisions of the Act apply to orders granted by courts in Manitoba or courts or tribunals outside of Manitoba with jurisdiction to grant custody orders. The Act applies to children under the age of eighteen years. No formal reciprocal arrangement is required. The purposes of the legislation are stated in section 2:

⁴⁵⁵ Manitoba's Child Custody Enforcement Act can be accessed at
 < <http://web2.gov.mb.ca/laws/statutes/ccsm/c360f.php> > (French) and
 < <http://web2.gov.mb.ca/laws/statutes/ccsm/c360e.php> > (English).

- (a) to recognise that the concurrent exercise of jurisdiction by more than one province, territory or state in respect of the custody of the same child ought to be avoided;
- (b) to discourage the abduction of children as an alternative to the determination of custody rights by due process;
- (c) to provide for the more effective enforcement of custody orders; and
- (d) to provide for the recognition and enforcement of custody and access orders made outside Manitoba.

307. By definition, the term "custody order" includes "provisions (...) granting another person a right of access or visitation to the child" (s. 1).

308. Where an extra-provincial custody order exists, a Manitoba court "(...) shall enforce, and make such orders as it considers necessary to give effect to (...) the order, unless (...) it is satisfied on the evidence adduced that the child affected by the custody order did not, at the time the custody order was made, have a real and substantial connection with the province, state or country in which the custody order was made." (s. 3)

309. Pursuant to the Child Custody Enforcement Act, a Manitoba court can:

- (a) after recognizing a foreign custody order, pronounce such orders as are necessary to give effect to same under the Child and Family Services Act and the Family Maintenance Act (s. 7);
- (b) pronounce non-molestation orders against a respondent and require the posting of a bond or the signing of a recognizance (s. 8);
- (c) with or without notice, authorise a person to apprehend the child in question to give effect to the court order [s. 9(1)(d) and (2)];
- (d) with or without notice, direct law enforcement officers or agencies to "locate, apprehend and deliver the child to the person named under the order" [s. 9(1)(e)] and in order to do so, to "enter and search any place he has reasonable and probable grounds for believing that the child may be" [s. 9(4)]; and / or
- (e) to prevent the removal of a child or secure the return of a child, order
 - (i) transfer of property to a trustee,
 - (ii) maintenance payments be made to a trustee,
 - (iii) the posting of a bond, with or without sureties, and/or
 - (iv) delivery of the person's or the child's passport and other travel documents.
 [s. 10(1) (3)]

310. In Finland, a mediation phase is normally included in the enforcement of a custody or contact order but not in the enforcement of a return order.

311. In the Netherlands, police-assisted enforcement is not used for contact orders (unlike for return orders) but under Dutch private 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 or a modification or withdrawal of custody rights.

312. In New Zealand, the Care of Children Act contains a range of options for enforcing contact orders.⁴⁵⁶ If the parties are unable to resolve the dispute themselves, the courts may admonish the contravening party (section 68); vary or discharge the order (section 68); order the contravening party to enter into a bond as an assurance that the party will

⁴⁵⁶ The Care of Children Act provides for parenting orders, which can contain arrangements for contact. For the purposes of this questionnaire the Central Authority referred to parenting orders that contain arrangements for contact as "contact orders".

not contravene the order again (section 70);⁴⁵⁷ order the contravening party to reimburse the other party for costs as a result of that party's contravention (section 71);⁴⁵⁸ and issue a warrant⁴⁵⁹ for the child to be uplifted and delivered to a specified person (section 72). If there are concerns that the abducting party may attempt to remove the child from New Zealand in attempt to thwart a return or contact order, an order preventing removal of the child can be made (section 118 and 77). The order preventing removal may then be entered into the Customs Service computer system to alert Customs officials at border control if an attempt is made to remove the child from New Zealand. The Care of Children Act also makes it an offence to intentionally contravene an order, or to knowingly resist or obstruct the execution of a warrant to enforce a contact order. A person who knowingly resists or obstructs the execution of a warrant to enforce a contact or return order, is liable on summary conviction to a fine not exceeding NZD 2,500 or imprisonment for a term not exceeding three months. The penalty of imprisonment allows the police to arrest a person without an arrest warrant. The penalty of imprisonment has only been available since 2005 and the Central Authority, when responding to the questionnaire, expected that it would be used only in exceptional cases. The imposition of fines for contravening contact orders, which already existed before 2005, is also rare.

313. In South Africa, the enforcement order may be coupled with a suspensive warrant of committal to gaol against the defaulting parent. In the United States of America, in addition to what was said concerning return orders, in each state there are laws that make "interference with custody" a felony punishable by a fine and / or at least one year in jail.

314. In Scotland, in theory the same coercive measures (contempt proceedings) as for return orders are available for the enforcement of contact orders. However, in reality there are considerable problems in enforcing even domestic contact arrangements when one parent is determined not to comply. There are obvious difficulties in imprisoning one of the child's parents (especially the parent with care) or imposing a fine which might impoverish the family. In international cases, the parent in breach may not even be within the jurisdiction of the court.

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).

315. This again is a question which is intended to further explore the tools provided for in domestic enforcement law, without being directly related to the 1980 Convention. The aim is to clarify whether a sanction (such as a fine or imprisonment) for non-compliance with a contact order may only be imposed (and enforced) as long as the purpose of the measure can still be achieved. *E.g.* where contact is to take place on a certain day, and that day has gone by without contact having taken place because the custodial parent hid the child in an unknown place, the question is whether any fine or imprisonment can still be enforced later, as a sort of punishment. The purpose of this question is to find out whether this would make any difference, *i.e.* whether the deterring effect of the mere existence of these sanctions is greater or smaller, depending on the answer.

316. Several jurisdictions explicitly responded that all or some of the sanctions can be imposed at any time, *i.e.* while it is still possible to achieve compliance within the

⁴⁵⁷ In force since 1 July 2005.

⁴⁵⁸ In force since 1 July 2005.

⁴⁵⁹ But this is used extremely rarely in contact cases; see *supra*, para. 303.

prescribed time as well as afterwards.⁴⁶⁰ In Germany this has only been introduced recently. While the available coercive measures (fine and imprisonment) have remained the same, until 1 March 2005 they could only be imposed as a means aimed at achieving compliance. Where this was no longer possible, *e.g.* because the period fixed for contact had expired, the sanction could no longer be imposed. The result was that obstruction by the custodial parent of contact between the other parent and the child remained largely without negative consequences for the obstructing parent. This was felt not to be satisfactory. Now the sanction can also be imposed *ex post facto* as a punishment. It remains to be seen whether this will change the situation because reports from other jurisdictions where this is already the case do not give a clear picture in this respect. The response from South Africa indicated that the enforcement order may be coupled with a suspensive warrant of committal to gaol against the defaulting parent and that this may happen *especially* when the contact period has already elapsed, to prevent future non-compliance. The aggrieved parent may also approach the court by way of urgency while the contact period subsists. However, it was not mentioned whether this actually leads to contact in practice. Others⁴⁶¹ reported that imprisonment of the custodial parent is practically never ordered because this would not be in the best interest of the child, and also a fine would ultimately impoverish the family and have a negative impact on the child.

317. In some jurisdictions, on the other hand, there is another possibility: In Denmark, a domestic contact order can only be enforced by the courts as long as the period mentioned in the contact order has not yet expired. But if the contact order expires before it can be enforced, the Local Government (the authority competent for making domestic contact orders) can on application grant compensatory contact. As mentioned above, this possibility also exists in Canada (Alberta and Saskatchewan).

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.

318. This third question now moves beyond the enforcement of domestic orders but is still not directly related to any particular provision in the 1980 Convention. A large number of respondents stated that no distinction is made between the enforcement of domestic and foreign contact orders once the latter have reached the stage of actual coercive enforcement.⁴⁶² In order to reach that stage, foreign orders have to be eligible for enforcement in the respective jurisdiction.

319. Conditions for such eligibility vary: In many jurisdictions, the foreign decision first has to be recognised and declared enforceable, or registered for enforcement,⁴⁶³ or a mirror order has to be made.⁴⁶⁴ In some jurisdictions, a treaty is required for the recognition of foreign orders while in others, internal law also allows for this.⁴⁶⁵

⁴⁶⁰ **Austria** (pecuniary fines can be imposed even after the expiry of the contact period), **Chile** (commenting, however, that for Chilean judges it appears to be very difficult at any time to order imprisonment of a custodial mother who does not comply with a contact order in favour of the non-custodial father), **Cyprus, Italy, Netherlands, Romania, South Africa.**

⁴⁶¹ *E.g.* **Chile, United Kingdom (Scotland).**

⁴⁶² **Argentina, Canada (Alberta, Manitoba), Chile, Cyprus, Finland, Italy, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Romania, Sweden, Turkey, United Kingdom (Isle of Man; Scotland - but see also *supra*, para. 314, referring to differences in practice, caused by the difference of facts where one party is outside the jurisdiction).** In the answer from Belarus it was only explained that applications to make arrangements for organising or securing the effective exercise of rights of access can be considered by both specific administrative agencies (organs of guardianship in the person of the departments of popular schooling) and courts of general jurisdiction, without referring to the possibility of recognising and enforcing a foreign contact order.

⁴⁶³ This was mentioned, *e.g.*, by **China (Hong Kong), Italy, Luxembourg, New Zealand, Romania and Sweden** but also applies to other jurisdictions.

⁴⁶⁴ In **China (Hong Kong)** this is the case where the foreign order allows a child to stay in Hong Kong for a period of contact and is to be returned to the State of habitual residence afterwards.

⁴⁶⁵ In **Sweden**, *e.g.*, the law only provides for recognition and enforcement of foreign contact orders in the following instruments: Law (1977:595) on recognition and enforcement of Nordic decisions in the area of private law, Law (1936:79) on recognition and enforcement of a decision issued in Switzerland and Law (1989:14) on recognition and enforcement of foreign decisions concerning custody of children etc. and on the

Moreover, Member States of the European Community referred to European Community law, namely the so-called Brussels II *bis*-Regulation.⁴⁶⁶ Concerning contact orders, this Regulation, which is directly applicable in 24 of the 25 EU Member States with the exception of Denmark, provides two ways for enforcing a contact order in another EU Member State: either through a procedure of recognition and declaration of enforceability as in traditional treaties on the recognition and enforcement of decisions, or through a new procedure. Provided that a certificate according to Annex III of the Regulation has been issued in the European Community Member State where the contact order was made which states, *inter alia*, that all parties and, where appropriate, the children have been heard and that the order is enforceable in the State of origin, under Article 41 of the Regulation no further declaration of enforceability (*exequatur*) is necessary in the requested State. The order can be handed over directly to the enforcement officer in the requested State. This is also true if the law of the requested case requires a specific coercive measure to be ordered by the court before it may be applied, provided that the contact order already names a specific coercive measure to be used. In other cases, where a coercive measure in case of non-compliance yet needs to be fixed, the judicial and other authorities of the requested State will have to do so.

320. In Denmark, a contact order from another Hague Convention country will not be recognised by the Danish authorities and can therefore not be enforced. The applicant would have to bring new proceedings in Denmark and will be assisted by the Central Authority in doing so.⁴⁶⁷

321. In Luxembourg, contact with a child residing there can be sought either through an application for the recognition and enforcement of a foreign contact order or through an application for contact before a court in Luxembourg. The procedure is different: In the former case, the president of the *tribunal d'arrondissement* in whose district the child is resident or presumed to reside will decide upon the application in *ex parte* proceedings. The application may only be rejected if the conditions established by the Convention invoked in the particular case are not complied with. The foreign contact order may not be reviewed as to its merits. The decision is served upon the applicant by registered letter through the *greffier*. A positive decision will set a deadline of no more than fifteen days for the applicant to serve the decision upon the other party. If this deadline is not met, the decision on recognition and enforcement will lose its effect.

322. The party against whom enforcement is sought may appeal the declaration of enforceability within eight days following service. The Court of Appeal will deal with the case as a matter of urgency. Against the decision of the Court of Appeal, a further appeal (*recours en cassation*) is possible.⁴⁶⁸

323. Where the application for a declaration of enforceability is rejected, the applicant and the public prosecutor may appeal this decision. The appeal has to be filed within one month following service of the decision rejecting the application. Here again, a further appeal (*recours en cassation*) is possible.

324. If a contact order is sought in Luxembourg, the Juvenile Court (*tribunal de la jeunesse*) or the Guardianship Judge (*juge des tutelles*) will decide – the former where a contact order is sought following a divorce of the parents or the modification or completion of an existing contact order is sought, the latter in other cases. The decision may be appealed to the Juvenile Chamber of Appeals of the Court of Appeal within one month following its service if it was given by the Juvenile Court⁴⁶⁹ and to the Civil Chamber of the Court of Appeal within forty days if it was given by the Guardianship Judge. A further appeal (*recours en cassation*) is possible to the Supreme Court (*Cour de cassation*); it may be brought by either party or the public prosecutor.

return of children, implementing the 1980 European Custody Convention. Moreover, Council Regulation (EC) No 2201/2003 of 27 November 2003 applies (see *supra*, para. 296).

⁴⁶⁶ See *supra*, para. 296.

⁴⁶⁷ See *infra*, para. 332.

⁴⁶⁸ The challenge of *opposition* is not available.

⁴⁶⁹ A default decision of the Juvenile Court is subject to *opposition* within fifteen days following service.

325. The contact order normally fixes the practical details of contact. Where travelling is involved, the decision will also establish who has to bear the travel costs. In the order it is often stated that this will apply unless the parties agree otherwise. If the order establishes that the parent with whom the child is living shall pay all or part of the travel expenses for the exercise of contact and that parent does not do so, the parent exercising contact with the child will have to bear the travel expenses in full. It is recommended that this parent subsequently applies for an enforcement order (an enforceable payment order) against the other parent to recover these costs.

326. In the Bahamas, the courts would normally not modify foreign contact orders. If necessary, this should be done by the court which granted the order. Where Hague return proceedings are pending before a court in the Bahamas and are adjourned, the court may however grant contact to the left-behind parent pending the outcome of the proceedings. Domestically, children born to couples married at the time of birth or later legitimated or adopted by the father fall under the Guardianship and Custody of Infants Act. Application for the grant of a contact order may be made to the Supreme Court. Where divorce proceedings are pending in the Bahamas, issues of contact may be resolved as an ancillary application under the Matrimonial Causes Act. Where the parents were not married at the time of the birth, and the child is not legitimated or adopted, the father cannot obtain an order for access unless he has been adjudged the putative father under the Affiliation Proceedings Act.

Other issues, including Article 21 of the 1980 Convention and the role of Central Authorities

327. Several responses addressed some further issues that are directly related to the Convention. Some respondents mentioned that there were very few contact cases under the Hague Convention.⁴⁷⁰ This was sometimes explained by the interpretation given to Article 21 of the Convention.

328. In a number of jurisdictions, Central Authorities do nevertheless provide some assistance under Article 21 of the Convention in case of applications concerning contact:

329. In Canada (Quebec), the Central Authority will send a letter to the parent who is refusing to give the applicant access to the child if an application has been made to protect access rights. They sometimes contact the parent by phone and try to convince him or her to send the child to visit the other parent in accordance with the judgment of the Quebec or foreign court. These efforts are always undertaken in the best interests of the children involved. Where an application has been made to determine the particulars of access rights, the Central Authority of Quebec can contact the parent, either by letter or by telephone, and attempt to negotiate an out-of-court settlement. They have sometimes even prepared a draft agreement for the parents. If the efforts of this kind are unsuccessful, they see to it that the applicant parent is represented by private or legal aid counsel. Once the proceedings are commenced in court, it is difficult for the Central Authority to intervene because the parents are represented by counsel; however, if necessary, the Central Authority can deal with counsel and the court as *amicus curiae*.

330. In the Canadian province of Saskatchewan, the Central Authority usually contacts the custodial parent to determine whether access as ordered can proceed without further

⁴⁷⁰ **Czech Republic:** 2001: 5 incoming, 2 outgoing cases, 2002: 2 incoming, 0 outgoing cases, 2003: 5 incoming, 4 outgoing cases; **New Zealand:** 2001: 4 contact orders, 2002: 2 contact orders, 2003: 5 contact orders made under the Convention. In New Zealand it is rare that enforcement needs to be taken for the access period immediately following a contact order being made under the 1980 Convention, and no information is available on the necessity for enforcement in subsequent contact periods. **Slovakia:** 1 case pending in 2003, **Spain:** 2001: 18 contact applications (as opposed to 85 for return), 2002: 26 (117), 2003: 28 (129), **United Kingdom (Isle of Man):** no Hague contact orders made in 2001, 2002 or 2003, (**Scotland**). Similarly, **Luxembourg** reported the following figures for the years 2000-2004 in cases where Luxembourg was the State where a contact order was sought concerning transfrontier contact: 2000: one contact order made, no enforcement problems; 2001: *idem*; 2002: no decision; 2003: *idem*; 2004: one contact order made, order was not enforced and the case scheduled for re-hearing at the time of the response to the questionnaire.

involvement of their office or court decision. Where those efforts fail, the Saskatchewan Central Authority would, through the foreign Central Authority, advise the parent seeking contact that (s)he may want to consider bringing a court application in Saskatchewan to enforce access. The Saskatchewan Central Authority would then provide assistance in locating counsel and facilitating the court application.

331. Like other Canadian Central Authorities, Manitoba's Central Authority does not appear in court on behalf of left-behind parents seeking to enforce or establish a right of contact. In contact cases, Manitoba's Central Authority will liaise with the Central Authority in the jurisdiction where the parent seeking contact resides and provide information to assist that parent in locating or obtaining legal counsel through legal aid or privately. The Central Authority will also help Manitoba parents wishing to seek contact enforcement or establishment in another jurisdiction complete the necessary documentation to be forwarded to the foreign Central Authority. Manitoba's Central Authority will not provide or pay for counsel for a parent seeking to establish or enforce contact to a child; costs must be borne by the parent (unless (s)he qualifies for legal aid under the province's Legal Aid Programme). The Central Authority can also monitor progress of court proceedings, appear in court in the role of *amicus curiae* and provide status updates to the requesting Central Authority.

332. In Denmark, the Central Authority would forward any request for contact that it receives from another Contracting State under Article 21 to the Local Governments Office which is the competent authority for making contact orders. The Local Governments office will then consider the application according to the Danish rules for contact. A contact order from the Local Governments Office can be appealed to the Department of Family Affairs (Central Authority). Similarly, in Mexico the Central Authority would also assist an applicant in obtaining or enforcing a right to have contact with a child. In New Zealand, an application made under the Convention for assistance from the Central Authority to secure contact with the child will be dealt with under the Care of Children Act in the same way as domestic applications, and a resulting order can be enforced under the general provisions relating to enforcement of domestic orders. The Care of Children Act provides for the appointment of legal counsel to represent an applicant in any proceedings under the 1980 Convention in New Zealand, and this includes applications to the court for one of the mechanisms for enforcing return or contact orders described. The appointment of legal counsel under the Care of Children Act is funded and operated separately from New Zealand's legal aid system under the Legal Services Act 2000. In most cases where the applicant is unrepresented, the Central Authority will appoint legal counsel to represent that applicant. The costs of the legal counsel are met by the New Zealand government. However, there are limits to the assistance provided in contact cases: while the Central Authority will get involved in the initial enforcement of a contact order it will not provide assistance where there are successive or ongoing issues of enforcement (for example, the enforcement of contact periods during successive school holidays). Where there are ongoing issues relating to the enforcement of a contact order, the applicant will need to meet the costs of legal counsel unless he or she is eligible for legal aid provided under the Legal Services Act 2000. Generally, if an applicant is granted legal aid to seek an order, the grant will cover any proceedings necessary to enforce that order. In proceedings for the enforcement of contact orders, the court may make any order as to legal costs it thinks fit. Norway responded that under Article 21 of the Hague Convention, applications for contact can be sent to the Central Authority because Article 21 of the Convention applies to the latter, but the Article imposes no obligations on any other authorities, as for instance the courts. The Central Authority has the obligation to assist with practical questions, such as information regarding lawyers, free legal aid and the legal proceedings in such cases etc. Under Norwegian law, Article 21 of the Convention does not provide a legal basis for enforcing a right to contact. There is no provision regulating the right to access in the Norwegian Child Abduction Act. The Spanish Central Authority reported that very few applications were brought before the Spanish courts, and some were rejected, based on the understanding that the purpose of Article 21 is the co-operation between Central Authorities.

333. In the United Kingdom (Scotland), following the decision of the Inner House of the Court of Session in *D'Onofrio v. Burrell*,⁴⁷¹ the Central Authority can only accept an application for access where it is accompanied by an existing access order which requires little or no modification. Consequently, the Central Authority receives very few applications to enforce rights of access. The applications that are accepted are given full legal aid and are enforced by solicitors who will ensure that periods of existing agreed access are arranged for the applicant.

334. In a group of other jurisdictions, assistance by the Central Authority would be even more limited or it would not be provided under Article 21 of the Convention at all in contact cases: In France, contact proceedings brought under Article 21 have to be instituted directly by a lawyer chosen by the applicant or designated by the office of judicial assistance (*bureau d'aide juridictionnelle*). The Public Prosecutor, who represents the applicant in Hague return proceedings, would not do so in contact cases. In France and Luxembourg, the applicant would also have to seek enforcement of the contact order himself if necessary, and request a bailiff (*huissier*) to enforce it while for return orders, the Public Prosecutor would ensure enforcement. In Luxembourg, the applicant may however request the public prosecutor to assist in the efforts to make the other party comply with the decision. The public prosecutor may then request the assistance of the Central Service of Social Assistance or of the Service for Family Mediation, but their intervention remains purely optional. If enforcement of the contact order fails, the applicant could file a complaint under criminal law in both France and Luxembourg.

⁴⁷¹ 2000 SLT 1051; 2000 SCLR 465; 1999 FamLR 141, also available at < www.incadat.com > [INCADAT HC/E/Uks 349].

ANNEXES

Jurisdictions with one ordinary challenge		
State / jurisdiction Name of first instance court	Name of second instance court Deadline for filing appeal	Extraordinary challenges
Argentina Court of First Instance (sometimes general, sometimes more specialised such as civil court or family court) (federal structure, different in each province)	Court of Appeal appeal or nullity challenge average 5 days (federal structure, different in each province)	Supreme Court of each province extraordinary challenge (<i>Recurso extraordinario</i>) average about 10 days normally on constitutional issues ¹
Bulgaria Sofia City Court (court has 30 days to decide following receipt of the application)	Sofia Court of Appeal - 14 days from day of hearing where decision was pronounced with reasons if party was present - 14 days from notification of decision if party was not present (court has 30 days to decide the appeal)	--
Chile Juvenile Court (<i>Juzgado de Menores</i>)	Court of Appeal (<i>Corte de Apelaciones</i>) 5 days from day that decision was given	Supreme Court <i>Recurso de Queja</i> 5 days from day that 2 nd instance decision was given applies only if the judges of the Court of Appeal committed fault or serious abuse when giving their decision
	Court of Appeal (<i>Corte de Apelaciones</i>) <i>Recurso de Amparo</i> - if abducting parent has been arrested - can be filed any time as long as the situation lasts which might violate a constitutional right of the abductor or while the coercive measures are still in force	Supreme Court <i>Recurso de Apelación</i> 24 hours following decision
China (Macao) MSAR First Instance Court	MSAR Second Instance Court 10 days	First Instance Court may always modify its decision, without prejudice to effects already produced, where supervening circumstances (which either occurred after the decision was given or were not raised due to unawareness or any other considerable motive) justify the alteration.
Cyprus Family Court	Supreme Court 14 days; extension possible but difficult procedure and almost never approved	--
Czech Republic District Court (<i>Okresní soud</i> – there are 75)	Court of Appeal (Regional Court) 15 days	--
Finland Helsinki Court of Appeal	Supreme Court 14 days from day that decision was given	--
Germany Family Court (concentration by venue rules on 22 courts in Germany)	Court of Appeal (Higher Regional Court – <i>Oberlandesgericht</i>) immediate appeal (<i>sofortige Beschwerde</i>) 2 weeks from receipt of decision	- Federal Supreme Court <i>Divergenzvorlage</i> Court of Appeal shall immediately transfer the case to Supreme Court for final decision where Court of Appeal intends to divert from an earlier decision given by another Court of Appeal or by the Supreme Court

¹ Against the decision of the Supreme Court of the province, an extraordinary challenge (*Recurso extraordinario*) may be filed with the National Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*) for alleged violation of the constitution within 10 days.

Jurisdictions with one ordinary challenge		
State / jurisdiction Name of first instance court	Name of second instance court Deadline for filing appeal	Extraordinary challenges
		- Federal Constitutional Court constitutional complaint (<i>Verfassungsbeschwerde</i>) for alleged violation of constitutional rights 1 month from receipt of 2 nd instance decision
Italy Juvenile Court (<i>Tribunale per i minorenni</i>)	Supreme Court (<i>Corte di Cassazione</i>) 60 days from service of decision	--
Malta Family Court (currently made up of two judges)	Court of Appeal 20 days from date of the decision	--
Panama Child and Adolescence Court	First Superior Tribunal of Appeal for the Jurisdiction of Child and Adolescence 5 days from date of notification of the decision	--
Romania Tribunal for minors and the family Bucharest	Court of Appeal Bucharest 10 days from receipt of decision	--
Slovakia District Court (<i>Okresný súd</i>)	Regional court (<i>Krajský súd</i>) 15 days from service of decision	- Court of First Instance retrial (following a final decision of 1 st or 2 nd instance) within 3 months after having learned about reasonable grounds - Supreme Court special review (following a final decision of 1 st instance) upon petition by General Attorney within 1 year since decision of 1 st instance became final - Supreme Court review (following a final decision of 2 nd instance) within 1 month since decision of 2 nd instance became final
Spain Judge of First Instance or Family Judge	Audiencia provincial 5 days from notification of decision	Constitutional Court (<i>Tribunal Constitucional</i>) <i>Recurso de Amparo</i> 20 days from date of notification of final 2 nd instance decision
Switzerland (some cantons)	Cantonal Tribunal (<i>Tribunal cantonal</i>)	Federal Supreme Court (<i>Tribunal Fédéral</i>) – Appeals Commission (<i>Commission de recours</i>) public law challenge (<i>Recours de droit public</i>) 30 days from notification of decision
Turkey Family Court	Supreme Court 15 days from service of decision	Supreme Court Where Supreme Court affirms decision of the family court: no further review possible Where Supreme Court amends decision of the family court: Revision (may be requested only exceptionally) within 15 days from service of decision
United Kingdom (Isle of Man) High Court of Justice	Appeal Court, Staff of Government Division 6 weeks	--

Jurisdictions with two levels of ordinary challenge			
State / jurisdiction Name of first instance court	Name of second instance court Deadline for filing appeal	Name of third instance court Deadline for filing appeal	Extraordinary challenges
Austria District Court (<i>Bezirksgericht</i>) (concentration by venue rules on 16 courts in Austria)	Court of Appeal (<i>Landesgericht</i>) 14 days from service of decision (plus 14 days for other party to reply before file is transferred from first instance to Court of Appeal)	Supreme Court (<i>Oberster Gerichtshof</i>) appeal on points of law (<i>ordentlicher / außerordentlicher Revisionsrekurs</i>) 14 days from service of decision (plus 14 days for other party to reply)	
Bahamas Supreme Court	Court of Appeal 6 weeks after delivery of decision	Privy Council request for leave to Court of Appeal within 21 days of decision appealed from and notice is served on the other party or request for Special Leave to Privy Council to be lodged with the least possible delay after the date of the decision from which the leave to appeal is sought	
Canada (Alberta) Court of Queen's Bench	Alberta Court of Appeal 20 days from service of decision	Supreme Court of Canada 60 days from day that decision was given	Court of Queen's Bench as soon as return proceedings are pending and at any time, with notice of no less than 14 days given to Attorney General before the date of the hearing challenge pursuant to Canada's Charter of Rights and Freedoms
Canada (Manitoba) Court of Queen's Bench (Family Division)	Manitoba Court of Appeal 30 days after decision is filed	Supreme Court of Canada 60 days from day that decision was given	Court of Queen's Bench as soon as return proceedings are pending and at any time, with notice of no less than 14 days given to Attorney General before the date of the hearing challenge pursuant to Canada's Charter of Rights and Freedoms
Canada (Quebec) Superior Court	Quebec Court of Appeal 30 days from service of decision	Supreme Court of Canada 60 days from day that decision was given	Superior Court as soon as return proceedings are pending and at any time, with notice of no less than 30 days given to Attorney General before the date of the hearing challenge pursuant to Canada's Charter of Rights and Freedoms or Quebec's Charter of human rights and freedoms
Canada (Saskatchewan) Court of Queen's Bench	Saskatchewan Court of Appeal 30 days from date of the decision	Supreme Court of Canada 60 days from day that decision was given	Court of Queen's Bench as soon as return proceedings are

Jurisdictions with two levels of ordinary challenge			
State / jurisdiction Name of first instance court	Name of second instance court Deadline for filing appeal	Name of third instance court Deadline for filing appeal	Extraordinary challenges
			pending and at any time, with notice of no less than 14 days given to Attorney General before the date of the hearing challenge pursuant to Canada's Charter of Rights and Freedoms
China (Hong Kong) High Court	Court of Appeal 28 days from date on which the decision was sealed	Court of Final Appeal 28 days from date of decision	--
Denmark Copenhagen City Court	High Court 14 days from the decision	Supreme Court (<i>Højesteret</i>) (provided that leave is granted by the Appeals Permission Board) application for leave to appeal must be filed within 8 weeks from date of decision	--
France Tribunal de Grande Instance (concentration by venue rules on 30 courts in France plus 6 in the overseas territories)	Court of Appeal (<i>Cour d'appel</i>) 15 days from service against a decree (<i>ordonnance</i>) 1 month from service against a judgment	Supreme Court (<i>Cour de Cassation</i>) 2 months from service (plus 2 extra months for parties residing abroad)	--
Greece Court of First Instance	Court of Appeal - 60 days from service of decision for party living abroad - 3 years if decision was not served	Supreme Court (Court of Cassation) - 90 days from service - 3 years if decision was not served	--
Luxemburg <i>Tribunal d'arrondissement</i> (there are 2 in Luxemburg: in the city of Luxemburg and in Diekirch)	Court of Appeal (<i>Cour d'appel</i>) - 8 days from service for <i>opposition</i> against default decision - 15 days from service for appeal against other decision	Supreme Court (<i>Cour de Cassation</i>) 2 months (plus extra time for parties residing abroad where applicable for <i>recours en cassation</i> ; the rules concerning extra time depending on the distance are complex; <i>e.g.</i> , the extra time for those living in Europe is 15 days) - beginning from service for contradictory decisions - beginning from day where no opposition is possible any more (<i>i.e.</i> after 9 days) for default decisions <i>opposition</i> against 2 nd instance default decisions (where 1 st instance was not also given in default) 8 days from service	--

Jurisdictions with two levels of ordinary challenge			
State / jurisdiction Name of first instance court	Name of second instance court Deadline for filing appeal	Name of third instance court Deadline for filing appeal	Extraordinary challenges
Mexico Family Judge (<i>Juez de lo Familiar</i>)	Court of Appeal (<i>Tribunal Superior de Justicia</i>) of each state (some have a specialised <i>Sala de lo Familiar</i>) 9 days from service against decision / judgment (<i>sentencia definitiva</i>) 6 days from service against interim order or decree (<i>sentencia interlocutoria o auto</i>)	Federal Collegiate Circuit Court (<i>Tribunal Colegiado en Materia Civil</i>) <i>Juicio de Amparo Directo</i> 15 days against final court decisions that allegedly violate the constitution ¹	Federal District Court in Civil Matters (<i>Juzgado de Distrito en Materia Civil</i>) <i>Juicio de Amparo Indirecto</i> any time for an alleged violation of the constitution causing irreparable harm ²
Monaco ³ Court of First Instance (<i>Tribunal de première instance</i>)	Court of Appeal (<i>Cour d'appel</i>) 30 days from service of decision	Cour de révision 30 days from service of decision (plus extra time for parties residing abroad)	--
Netherlands Children's Judge within the Court of First Instance	Court of Appeal 2 weeks from date of decision	Supreme Court (<i>Hoge Raad</i>) 4 weeks from date of decision	--
Norway Court of Execution and Enforcement	Court of Appeal 1 month from date of service or notification of decision	Supreme Court 1 month from date of service or notification of decision	--
South Africa High Court (relevant division)	High Court (Full Bench of same division) 15 days after decision in court (or 15 days after the reasons have been furnished if court first gave a decision without reasons)	Supreme Court of Appeal (SCA) 21 days after decision was given or Constitutional Court (if a constitutional issue is raised and SCA has refused to hear the appeal on the merits) 15 days from date of decision refusing leave to appeal to SCA	Constitutional Court (if a constitutional issue is raised) 15 days from date of decision of SCA against which the constitutional appeal is filed
Sweden Stockholm District Court (<i>Tingsrätt</i>)	Stockholm Court of Appeal (<i>Svea Hovrätt</i>) 3 weeks	Supreme Court (<i>Högsta domstolen</i>) 3 weeks leave by Supreme Court required	Court of Appeal (if decision attacked was given by District Court); or Supreme Court (if decision attacked was given by Court of Appeal) no deadline petition for retrial (<i>resning</i>) in exceptional cases (fraud, crime, new evidence, manifest contradiction with the law)
Switzerland (some cantons)	Cantonal Tribunal (<i>Tribunal cantonal</i>)	Cantonal Supreme Court (<i>Cour de cassation</i>)	Federal Supreme Court (<i>Tribunal</i>)

¹ Against the decision on the *amparo directo*, a writ of review (*recurso de revisión*) may be filed with the Federal Supreme Court of Justice (*Suprema Corte de Justicia*) for alleged violation of the constitution.

² Against the decision on the *amparo indirecto*, a writ of review (*recurso de revisión*) may be filed with the Federal Supreme Court of Justice (*Suprema Corte de Justicia*) for alleged violation of the constitution.

³ In Monaco, it is also possible for return to be ordered by an administrative authority in the first place. Against such decision, an appeal for nullification may be filed with the Supreme Court (*Tribunal Suprême*) if the authority allegedly exceeded its powers. In practice, however, civil court proceedings prevail over administrative proceedings.

Jurisdictions with two levels of ordinary challenge			
State / jurisdiction Name of first instance court	Name of second instance court Deadline for filing appeal	Name of third instance court Deadline for filing appeal	Extraordinary challenges
		<i>cantonale</i>)	<i>Fédéral</i>) – Appeals Commission (<i>Commission de recours</i>) Public law challenge (<i>Recours de droit public</i>) 30 days from notification of decision; if reasons were communicated after the decision, 30 days after notification of reasons
United Kingdom (England & Wales) High Court	Court of Appeal 14 days after decision unless court fixed different period or appeal court alters time limit	House of Lords 3 months from date on which decision was given	--
United Kingdom (Northern Ireland) Family Judge at the Family Division of the High Court	Court of Appeal 6 weeks after decision was filed	House of Lords 3 months from date on which decision was given	--
United Kingdom (Scotland) Court of Session	Inner House of the Court of Session 21 days from date of decision	House of Lords 3 months from date on which decision was given	--
United States of America 1. State courts: first instance trial court 2. Federal courts: Federal district court	1. State courts (in many states): (intermediate) Court of Appeal 2. Federal courts: Federal circuit court of appeal	1. State courts (in many states): (final) Court of Appeal ⁴ 2. Federal courts: U.S. Supreme Court	

⁴ Against the decision of the final state court of appeal, another ordinary appeal may be made to the U.S. Supreme Court.

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
Argentina	-	- n/a (+) no formal application but applicant should report non-compliance to court	1. police assistance 2. fine 3. search warrant etc. 4. transfer to criminal court for contempt proceedings (<i>desobediencia a la Autoridad, allanamientos con orden judicial etc.</i>)	1.-3. + 4. + later	1.-3. initial court 4. initial court for transfer; criminal court for contempt order	1.-3. same
Austria	-	- n/a - court's own motion or request of applicant	1. physical force (fetching the child) 2. fine 3. imprisonment	1.-3. +	1.-3. initial court	same (if necessary by phone call from bailiff to judge during enforcement)
Bahamas	-	- n/a -	1. police assistance 2. contempt proceedings (threat of imprisonment)	1. + 2. + later	1. initial court	court
Bulgaria	+ (<i>formule exécutoire</i>)	+ to court of first instance, directly or through Central Authority + to enforcement officer	fine (400 Leva for each non-compliance; may be repeated in unlimited number of cases)	-	by enforcement officer on application of applicant (administrative and judicial appeal possible)	
Canada (Alberta)	-	- n/a + to court	1. police assistance 2. assistance of children's services 3. any other order deemed necessary to achieve enforcement 4. contempt proceedings	1.-3. + (in original order or later) 4. + later	initial court	same
Canada (Manitoba)	-	- n/a + to court	1. physical force (order that child be fetched, <i>e.g.</i> by police, and turned over to a designated person, <i>e.g.</i> applicant) 2. any other order deemed necessary to achieve enforcement 3. contempt proceedings (fine, imprisonment or other specified relief)	1.-2. + (in original order or later) 3. + later	initial court	same
Canada (Quebec)	-	- n/a -	1. police enforcement 2. any other order deemed	1.-3. + (in original order or	1.-3.: initial civil court	1.-3. same

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
			necessary to achieve enforcement 3. contempt proceedings (fine up to 5.000 C\$, imprisonment up to 1 year, the latter also repeatedly until obedience) 4. criminal proceedings for abduction in Canada; arrest warrant during criminal proceedings to facilitate police search	later) 4. + later	4. criminal court	
Canada (Saskatchewan)	-	- n/a - Central Authority will provide police and child protection services with a copy of the order if their assistance is requested; if a further court order is required, Central Authority would apply to court for it	1. physical force (order a peace officer to locate, apprehend + deliver child to a person) 2. police assistance to locate the child (order that a police officer may enter and search any place where reasonable grounds for child to be located) 3. any other order deemed necessary to achieve enforcement 4. contempt proceedings (fine, imprisonment or both)	1.-3. + (in original order or later) 3. + later	initial court	same police (when asked by the court to enforce) can request participation of a child protection worker
Chile	+ (<i>certificado de ejecutoriada</i>)	+ to court of first instance +	1. police assistance to locate and remove child from abductor and hand over to applicant 2. imprisonment in case of non-compliance	1.-2. + separate from initial order; at enforcement stage after non-compliance	1.-2. initial court	same
China (Hong Kong)	-	- n/a + to court of first instance	1. physical force (forcible removal of the child from the abductor; only if there is a "liberty to apply" clause in the return order) 2. seizure of personal or real property of defendant to compel compliance (withheld until contempt is purged) 3. contempt proceedings (fine or imprisonment)	1.-2. + (in original order or later) 3. + later	initial court; where appellate court first orders return, application for leave to apply to enforce should be made to court of first instance	depends on wording of the order. If enforcement officer has been instructed to assist, and use of force is allowed in case of resistance without specifying the mode, enforcement officer may use a form they deem most appropriate (against abductor and / or child); subject to reasonableness test

Annex III

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
China (Macao)	-	- n/a -	1. any appropriate measure 2. civil contempt proceedings 3. criminal contempt proceedings	1. + 2. + 3. +	1. initial court 2. initial court 3. criminal court	1.-2. same
Cyprus	-	- n/a -	1. police assistance 2. contempt proceedings 3. criminal proceedings for contempt	1. - if indications for non-compliance, Central Authority may ask police for assistance; where there is suspicion that enforcement will be difficult, there can be a petition for an additional order from the court specifying the role of the Police or Social Services 2. + later (return order will contain a standard clause setting out the consequences of non-compliance)	1. - request by Central Authority to police is sufficient if court order is requested: initial court 2. initial court	
Czech Republic	-	- n/a +	1. physical force against defendant 2. fine not exceeding 50,000 crowns	+	initial court	same
Denmark	-	- n/a + application for enforcement to Copenhagen City Court	1. physical force against defendant 2. fine	+ (normally in order authorising coercive execution following non-compliance)	initial court	
Finland	-	- n/a + to enforcement officer to fetch the child	1. physical force against person opposing or hindering enforcement but NOT against child	1. + District Court (enforcement court) has to	1. enforcement officer 2. District Court (enforcement	2. same

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
			2. fine	order coercive measures and will first order that the child shall be fetched after the Helsinki Court of Appeal (= first instance here) has ordered return; enforcement officer can then decide independently upon appropriate physical force 2. +	court)	
France	- (<i>formule exécutoire</i> is required but is always included in the decision (standard closing formula))	- n/a -	1. police assistance (order that applicant be accompanied by police officers to collect the child or any other recourse to public forces) 2. fine (<i>astreinte</i>) for each day of non-compliance 3. criminal proceedings for abduction (opens criminal search facilities, e.g. inscription in missing persons registry, warrant of arrest)	1. - 2. + (in return order or later) 3. +	1. request of public prosecutor is sufficient 2. initial court 3. criminal court a) - public prosecutor (institution of criminal proceedings, missing persons registry) - applicant can file complaint with public prosecutor or police or judge (<i>juge d'instruction</i>) and become civil party in criminal proceedings (<i>partie civile</i>) b) judge (<i>juge d'instruction</i>) (arrest warrant)	if 2. does not work, 3 can be instituted and criminal court can take more coercive measures
Georgia	+ (enforcement		criminal proceedings for		initial court	

Annex III

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
	order)		abduction			
Germany	-	- n/a - enforcement on the court's own motion / <i>ex officio</i>	1. physical force / removal of child 2. fine (as penalty, not only to compel compliance) 3. imprisonment (as penalty, not only to compel compliance)	1. + 2.-3. + (penalty is threatened in initial order; in case of non-compliance court then needs to order fine or imprisonment)	1.-3. court whose final order shall be enforced (can be 1 st or 2 nd instance)	same
Greece	+ (exequatur, executory engrossment)	+ to court of first instance + to enforcement officer (court bailiff)	1. fine 2. imprisonment 3. police assistance (but no physical force is available against child or abductor)	1.-2. + (in initial order, return is ordered under penalty of a fine of up to 5,900 euros to be paid to applicant, or imprisonment, or both; in case of non-compliance court then needs to order fine or imprisonment)	1.-2. initial court	police may be asked for assistance
Italy	-	- n/a - court sends decision to public prosecutor who enforces if necessary	police assistance	-	request by public prosecutor is sufficient	?
Latvia	+ (execution document, writ of execution)	? + written application to enforcement officer	- in case of resistance against enforcement bailiff may 1. ask police for assistance 2. + later draw up statement + submit it to court; court may order fine up to 150 lats	1. - 2. +	1. enforcement officer 2. court	
Lithuania	+ (enforcement order)	+ to court of first instance + to enforcement officer	fine up to 1,000 litas	+	court having jurisdiction for the place of enforcement	
Luxembourg	- (<i>formule exécutoire</i> and <i>grosse</i> are required but will be automatically applied	- n/a -	1. police assistance to remove child from abductor or any other person 2. fine (<i>astreinte</i>)	1. - 2. +	1. request by public prosecutor is sufficient 2. initial court	1. police will refer to public prosecutor for new instructions

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
	to Hague return orders at the moment the decision is issued)					
Malta	+ (enforcement order; registration for enforcement in the registry of the court of appeal)	? -	1. physical force 2. imprisonment	-	1. enforcement officer 2. executive police has the power of detention	
Mexico	-	- n/a -	1. fine 2. imprisonment for max. 36 hours	+	family court	same
Monaco	- (Hague return proceedings in general are urgency proceedings; for decisions in urgency proceedings no <i>formule exécutoire</i> is required)	- n/a - Central Authority will initiate and supervise enforcement.	1. physical force (police assistance and assistance by public prosecutor) 2. police search for the child 3. proceedings for resistance if applicable 4. criminal proceedings for abduction which may lead to arrest warrant	1. ? 2. ? 3. + 4 +	1. ? 2. ? 3.-4. Public Prosecutor / criminal judge (<i>juge d'instruction</i>)	
Netherlands	-	- n/a -	1. police assistance (and assistance by Public Prosecutor) 2. fine 3. imprisonment	1. - by law 2. + 3. +	court (upon request of Central Authority if deemed necessary)	court (upon request of public prosecutor)
New Zealand	-	- n/a -	1. physical force (warrant to uplift and deliver child to a person); 2. fine (up to 2,500 NZD for offence to knowingly resist or obstruct any person executing a warrant described above) 3. imprisonment (not exceeding 3 months, for same offence) 4. contempt proceedings	1. + court needs to order warrant (in initial order or later); police or social worker may then use reasonable force when executing warrant (against any person including child), even if not mentioned in order. Furthermore,	1. Family Court or District Court 2.-3. Conviction and fine or imprisonment need to be ordered by District Court.	same

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
				enforcement officers have standard powers to use force to gain entry to buildings or vehicles. 2. + 3. +		
Norway	-	- n/a -	1. physical force 2. fine (enforcement damages)	1. +/- if repatriation through the enforcement officer is ordered, the latter is authorised to use physical force if necessary (normally in initial order) 2. + (normally in initial order)	initial court	same (court sometimes provides a prioritised list; within that range, enforcement officer may upgrade independently)
Panama	-	- n/a -	physical force	+	initial court	same
Romania	+ (<i>formule exécutoire</i>) and + court authorisation for enforcement (see next column)	+ to enforcement officer; enforcement officer then asks for court's authorisation of enforcement	1. physical force (removal of the child from abductor by police and other public force agents and handover to applicant) 2. fine 3. criminal proceedings for non-compliance	1. + 2. + (first fine always included in return order; no further court order required to levy it; if still no compliance after its levy, court may impose second fine) 3. +	court (upon request by applicant or Central Authority)	same
Slovakia	- (after decision has been served, a note is made <i>ex officio</i> in the court file and on the copy of the judgment which will	- n/a + to court	1. physical force (removal of the child from the abductor and handover to applicant, in cooperation with competent authorities) 2. fine	1.-2. + (court shall first call for voluntary compliance and inform of consequences of	initial court (district court)	same

Annex III

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
	be given to the enforcement officer)			non-compliance; shall also request local authority and welfare authority to persuade obligor to comply)		
South Africa	-	- n/a -	1. contempt proceedings 2. Should problems still persist in giving effect to the return order, court can order removal of child from abductor	1. + 2. +	1.-2. initial court	same
Spain	+ (enforcement order (<i>auto que despacha ejecución</i>))	+ to court of first instance (by applicant or Central Authority) -	1. any appropriate measure 2. criminal proceedings for abduction and / or non-compliance	1. + (either in original order or in separate order (<i>auto resolviendo la ejecución, acordando medidas ejecutivas concretas</i>)) 2. +	1. initial court 2. criminal court	1. same
Sweden	-	- n/a ?	1. police assistance (use of physical force by police officer only permitted if absolutely necessary) 2. fine	1. - court cannot order police to exercise physical force; this power is inherent to the police and its exercise subject to discretion 2. + (normally in original order but may be ordered later)	1. allowed by law 2. the initial court	same
Switzerland	-	- n/a	1. police assistance 2. criminal proceedings for	1. +/- 2. +	1. depends on canton: either by	

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
		- some cantons + some cantons	abduction and / or non-compliance with official decision; possible sanctions: fine and / or imprisonment		law, upon order of the court or upon instructions of superior administrative authority (e.g. public prosecutor, <i>syndic</i> , mayor, Concentration on the same authority throughout the country (court) to order return and enforcement measures should be introduced during the unification of civil procedure) 2. criminal court	
Turkey	-	- n/a + request by public prosecutor or applicant to enforcement officer	physical force by enforcement officer	- permitted by law		enforcement officer may upgrade intensity
United Kingdom (England & Wales)	-	- n/a + request Tipstaff would seek necessary orders so that return order can be enforced	1. Tipstaff can be ordered to escort the child, e.g. to a plane. 2. collection order backed by bench warrant which enables the Tipstaff to arrest and detain the respondent and bring him / her before the court for further measures 3. contempt proceedings (imprisonment)			
United Kingdom (Isle of Man)	-	- n/a - (+) applicant would make a complaint to court concerning non-compliance	contempt proceedings (imprisonment, for specific time or until compliance)	+	initial court	same
United Kingdom	-	- n/a				

Annex III

State / jurisdiction	Formality required?	application / request required? - for formality - for coercive enforcement to begin	coercive measures available	specific enforcement measure must be ordered	by whom?	who decides upon upgrade?
(Montserrat)		-				
United Kingdom (Northern Ireland)	-	- n/a - no specific request required but applicant will normally initiate steps to enforce through the court	1. penal order attached to return order (stating that breach will be punished by imprisonment) 2. order for police and social services to locate the child 3. contempt proceedings (imprisonment)	+	High Court	same
United Kingdom (Scotland)	-	- n/a -	1. physical force (if faced with great difficulties in enforcement, a warrant might be sought from the court for officers of court to search for and seize the child) 2. contempt proceedings (fine or imprisonment)	1. + 2. +	1. initial court 2. initial court	1. same
United States of America	-	- n/a + applicant may request law enforcement officers to assist if necessary	1. any lawful action to obtain return (by law enforcement officer and / or prosecutor) 2. contempt proceedings (fine or imprisonment until compliance)	1. - 2. +	1. public prosecutor or competent public official if reasonable belief of abduction 2. initial court	2. same

V. CO-OPERATION

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.

VII. OTHER INFORMATION

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.

Argentina

V. 3. Agencies involved in enforcement

Enforcement falls within the responsibility of the courts.

Bahamas

V. 3 Agencies involved in enforcement

Office of the Attorney-General
3rd -7th Floors
Post Office Building
East Hill Street
P.O. Box N-3007
Nassau
The Bahamas
Telephone: (242)502-0400
Telefax: (242)322-2255

The Commissioner of Police
The Royal Bahamas Police Force
East Street
P.O. Box N-4891
Nassau
The Bahamas

The Department of Social Services
Ministry of Social Services & Community Development
Thompson Boulevard
P.O. Box N 3206
Nassau
The Bahamas
Telephone: (242) 326-0451

Belarus

VII. 5. Other sources of information on enforcement

The Central Authority:

Ministry of Justice of the Republic of Belarus
ul. Kollektornaya 10
220048 MINSK
Belarus
Telephone: + 375 172 208 687 + 375 172 208 829

Telefax: + 375 172 209 684 or + 375 172 208 829

E-mail: jndrv@minjust.belpak.minsk.by

Contact persons:

Mrs Marina Zhandarova
Head of the Legal Assistance Treaties Division
Telephone: 375 17 211 01 85
E-mail: jndrv@minjust.belpak.minsk.by

Mrs Julia TARASEVICH
Leading specialist
(languages of communication: Russian, English)
Telephone: 375 17 211 02 01
E-mail: julia_t@minjust.belpak.minsk.by

Bulgaria

V. 3 Agencies involved in enforcement

Ministry of Justice
Sofia – 1040
№1, Slavianska Street
Telephone: +359 2 9237 544, +359 2 9237 514
Telefax: +359 2 980 9222
Website: < <http://www.mjeli.government.bg/> >

State Agency for Child Protection
Sofia – 1051
№ 2, Triaditsa Street
Telephone: +359 2 9339010
Telefax: +359 2 9802415
Website: < <http://www.sacp.government.bg/> >

Les Directions "Aide Social" se trouvent auprès de chaque municipalité et ont les adresses relatives.

Sofia City Court
and
Procureurs auprès de la procureure de la ville de Sofia
Sofia – 1000
№ 2, Vitosha Boulevard
Telephone: +359 2 9808290
Telefax: +359 2 9813740

Sofia Court of Appeals
and
Procureurs auprès de la procureure d'appel de la ville de Sofia
Sofia – 1000
№ 2, Vitosha Boulevard
Telephone: +359 2 9814217
Telefax: +359 2 9814027

Receivers attached to the regional courts and as of 1 September 2005 public and private enforcement officers

Canada

V. 3 Agencies involved in enforcement

Alberta

(a) The Federal government's Our Missing Children Program

Marie-France Olivera

Telephone: 613 993-1525

(b) Zebra Child and Adolescent Protection Centre

Sgt Darren Eastcott

Telephone: (780) 421 3383

(c) Department of Foreign Affairs

Sandra Zed Finless

Telephone: 613 996-1300

(d) International Social Services Canada

Telephone: 613 236-6161

Manitoba

The primary agency in Manitoba would be the Central Authority of Manitoba.

Department of Justice

Family Law Branch

705 - 405 Broadway

WINNIPEG, Manitoba

Canada

R3C 3L6

Telephone: +1 (204) 945 2841

Telefax: +1 (204) 948 2004

Internet: <http://www.gov.mb.ca/justice/family/law/index.html>

Quebec

Our Missing Children Program

Website: < <http://www.ourmissingchildren.ca/en/index.html> >

Coordinators in Québec:

RCMP – Constable Linda Brosseau

Telephone: (514) 939-8400, ext. 2645

Immigration – Alfred Pichard

Telephone: (514) 283-8236

Customs – Lyne Landry

Telephone: (514) 283-2488, ext. 5603

Quebec provincial police (SQ) - Sergeant Sylvain Bessette

Telephone: (514) 390-8276

Montréal municipal police – Lt.-Detective Yves Malo

Telephone: (514) 280-8504

Jean-Marc Lesage and Johanne Coulombe

Department of Foreign Affairs and International Trade

Telephone: 1-800-387-3124

Website: Consular Affairs at < www.voyage.gc.ca/consular_home-en.asp >

Linda Louis-Seize

Passport Office
Telephone: (819) 994-3539
Website: < www.ppt.gc.ca/ >

Saskatchewan

The Saskatchewan Central Authority is the primary agency responsible for enforcing return orders.

Department of Justice
Policy, Planning and Evaluation Branch
Public Law and Policy Division
1874 Scarth Street, 3rd Floor
REGINA, Saskatchewan
Canada
S4P 3V7
Telephone: +1 (306) 787 8954
Telefax: +1 (306) 787 9008
Internet: <http://www.saskjustice.gov.sk.ca/legislation/summaries/intlchildabdact.shtml>

Chile

V. 3 Agencies involved in enforcement

INTERPOL CHILE
Señor Aldo Villanueva Vives, Subprefecto, Jefe Administrativo O.C.N. INTERPOL-Santiago
Dirección: General Mackenna N° 1314
Telephone: +56 (2) 544 52 22 / 56 (2) 544 52 15
Telefax: +56 (2) 672 40 74

VII. 5. Other sources of information on enforcement

The President of the Supreme Court of Justice.

China

V. 3 Agencies involved in enforcement

Hong Kong

They are the Police, Immigration Department and the Social Welfare Department and they may be contacted through the Central Authority.

Websites:

Police: < www.info.gov.hk/police >

Social Welfare Department (Family and Child Protective Services Units):
< www.info.gov.hk/swd/html_eng/ser_sec/fam_ser/index.html >

Immigration Department: < www.immd.gov.hk/ehhtml/contactus.htm >

Further information:

- The legislation of Hong Kong is available on-line in the Bilingual Laws Information System ("BLIS") on the Department of Justice's website at < <http://www.blis.gov.hk/eng/index.htm> >. Amongst others, BLIS contains the Child Abduction and Custody Ordinance and the Rules of the High Court.
- Judgments of various levels of the courts in Hong Kong are available at the Judiciary's website at < <http://www.judiciary.gov.hk> >.
- Information about legal aid in Hong Kong is available at the Legal Aid Department's

website at < <http://www.info.gov.hk/lad> >.

Macao

MSAR Central Authority: "Instituto de Acção Social" (IAS)

Website: < www.ias.gov.mo >

Besides IAS, only the courts have a role to play in the context of return orders. In practical terms, cases of child abduction or access/contact are subsumed to judicial proceedings and the MSAR First Instance Court is the competent court, within which there are several "units" (juizos), having a different judge in charge of each one of them.

Cyprus

V. 3 Agencies involved in enforcement

The Welfare Department.
(Department of Social Welfare Services), Ministry of Labour and Social Insurance.

Denmark

V. 3 Agencies involved in enforcement

The courts.

Finland

V. 3 Agencies involved in enforcement

- The enforcement of the return orders is the responsibility of the local agencies.
 - A list of main actors in child abduction cases in general is found in the brochure "International Child Abduction" which can be found at < www.om.fi/esitteet/9604.htm >.
 - A list of local enforcement officers can be found at < <http://www.oikeus.fi/9363.htm> >.
-

Georgia

V. 3 Agencies involved in enforcement

Ministry of Foreign Affairs
#4, Chitadze St.
Tbilisi 0118
Georgia
Telephone / Telefax: +99532284747
E-mail: inform@mfa.gov.ge
Website: < www.mfa.gov.ge >

Ministry of Internal Affairs
G. Gulua Str.
Tbilisi
Georgia
Telephone: +99532991009

Website: < www.police.ge >

Germany

V. 3 Agencies involved in enforcement

Under federal implementing legislation, in some of the 16 German states complemented by state measures concerning the implementation of the Convention, 22 district courts have been designated as courts of first instance for Hague proceedings. They are also responsible for enforcing the order if the order is not appealed. In case of an appeal which is rejected by the Court of Appeal, or where the Court of Appeal quashes a first instance order which refused return and orders return, the Court of Appeal is responsible for enforcing the return order. There are 22 courts of appeal that have jurisdiction for cases under the 1980 Hague Convention in Germany.

VII. 5. Other sources of information on enforcement

Internationaler Sozialdienst (ISD)
Michaelkirchstraße 17/18
10179 Berlin
Telephone: +49 (30) 6 29 80 – 403
Telefax: +49 (30) 6 29 80 – 450
E-mail: roelke@issger.de

Italy

V. 3 Agencies involved in enforcement

The organ in charge of enforcement is the public prosecutor's office which may, but only if necessary, request the assistance of police forces or the Social Service for Minors. These bodies are distributed over the whole territory of Italy and are therefore rather numerous. Consequently, it is impossible to provide their contact details here.

VII. 5. Other sources of information on enforcement

The relevant information can only be provided by the Central Authority or the courts.

Latvia

V. 3 Agencies involved in enforcement

Central authority (Ministry for Children and Family Affairs)
Website: < <http://www.bm.gov.lv> >

Courts and other law enforcement bodies.

VII. 5. Other sources of information on enforcement

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 applies 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.

Ministry of Justice
Brīvības bulvāris 36

Rīga
LV-1536
Latvia
Telephone: +371 7036801, 7036716
Telefax: +371 7210823, 7285575
E-mail: tm.kanceleja@tm.gov.lv
Website: < <http://www.tm.gov.lv> >

Lithuania

V. 3 Agencies involved in enforcement

Ministry of Social Security and Labour of the Republic of Lithuania
(acting as Central Authority under the Hague Convention on the Civil Aspects of
International Child Abduction)

Vivulskio st. 11
LT-03610, Vilnius
Telephone: +370 5 266 4200
Telefax: +370 5 266 4209
E-mail: tpost@socmin.lt

Bailiffs Chamber of Lithuania
Konstitucijos ave. 12 – 214
LT-09308, Vilnius
Telephone: +370 5 275 00 67
Telefax (8 ~5) 275 00 68
E-mail: asta@alar.lt

Services of Child's Rights Protection are established in every municipality administration

Agency of Child's Rights Protection Controller
Subačiaus st. 5
Vilnius
Telephone: +370 5 2107176
Telefax: 370 5 2107176

Court of Appeals of Lithuania
Gedimino ave. 40/1
Vilnius
Telephone: +370 5 2663479

Luxembourg

V. 3 Agencies involved in enforcement

Question ne nécessitant pas de plus amples développements, au regard du fait que ce
sont les procureurs d'Etat et la Police qui sont les principaux intervenants au niveau de
l'exécution.

Malta

V. 3 Agencies involved in enforcement

One can access the Website of the Malta Police Force on the Internet.

Mexico

V. 3 Agencies involved in enforcement

The organs which are actively involved in the application of the Convention are the Central Authority and the courts, as well as their respective auxiliaries.

VII. 5. Other sources of information on enforcement

Ministry of Foreign Affairs, *Secretaría de Gobernación* and the public prosecutors' offices at the local level as well as of the Republic.

The Netherlands

V. 3 Agencies involved in enforcement

Dutch Central authority:

Ministry of Justice
Directie Justitieel Jeugdbeleid
Central Authority
Schedeldoekshaven 100
Postbus 20301
2500 EH THE HAGUE
Netherlands

Telephone: +31 70 3704893
Telefax: +31 70 3707507

New Zealand

V. 3 Agencies involved in enforcement

Central Authority
Ministry of Justice
PO Box 180
Wellington
New Zealand
Telephone: +64 4 918 8800
Telefax: +64 4 918 8820
Website: < <http://www.justice.govt.nz> >

Department of Child, Youth and Family
PO Box 2620
Wellington
New Zealand
Telephone: +64 4 918 9100
Telefax: +64 4 918 9299
Website: < <http://www.cyf.govt.nz> >

New Zealand Police
PO Box 3017
Wellington
New Zealand
Telephone: +64 4 474-9499
Telefax: +64 4 498-7400
Website: < <http://www.police.govt.nz/> >

Norway

V. 3 Agencies involved in enforcement

The Ministry of Justice and the Police
Postboks 8005 Dep
0030 Oslo
Norway
Website: < www.odin.dep.no/jd >

KRIPOS
Postboks 8163
0034 Oslo
Norway
Website: < www.kripos.no >

Furthermore, local courts of Execution and Enforcement will be involved, and also local child care authorities.

VII. 5. Other sources of information on enforcement

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.

Panama

V. 3 Agencies involved in enforcement

Ministry of foreign affairs (Central Authority)
Website: < www.mire.gob.pa >

Child and adolescence courts

VII. 5. Other sources of information on enforcement

The juvenile and child courts of Panama.

Slovakia

V. 3 Agencies involved in enforcement

All information can be found on the Central Authority's web site at < www.cipc.sk >.

VII. 5. Other sources of information on enforcement

Ministry of Justice of the Slovak Republic, courts in the Slovak Republic, local social offices.

South Africa

V. 3 Agencies involved in enforcement

The agencies are numerous. Government agencies may be accessed at

< <http://www.gov.za> <<http://www.gov.za/>>, which is a general Government website with links to the various departments. The senior Family Advocates in the various provinces are also often appointed ad hoc central authority in accordance with our domestic legislation, as and when the need arises. Such appointments are however channelled through the office of the Chief Family Advocate:

Office of the Chief Family Advocate
Central Authority for the Republic of South Africa
Room 9.36 West Tower
Momentum City Walk
c/o Prinsloo & Pretorius Streets
Private Bag X81
PRETORIA
0001
Telephone: +27 12 357 8021
Telefax: +27 12 357 8043

Spain

V. 3 Agencies involved in enforcement

The following have an active role in the enforcement of return orders:

1. The Central Authority: Ministry of Justice
2. The first instance Family Courts, whose addresses may be found in the European Judicial Atlas in Civil Matters at < http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm>.
3. Fiscalía
4. INTERPOL.

Ministerio de Justicia
Subdirección General de Cooperación Jurídica Internacional (Servicio de Convenios)
C/ San Bernardo 62
28071- Madrid
Telephone: +34 91 390 4437- or 4273
Telefax: + 34 91 390 2383
E-mail: carmen.garcia-revuelta@mju.es.

This service is in permanent contact with the *Abogacías del Estado* who have a seat in each province and assist it in proceedings concerning requests for return coming in from abroad.

Switzerland

V. 3 Agencies involved in enforcement

The enforcement of return orders falls within the competence of the cantons and their authorities.

Although the enforcement of return orders falls within the competence of the cantons and their authorities, the Central Authority is regularly called upon to assist in the implementation of a return order. In addition to a court decision directly ordering the Central Authority's participation in the enforcement of the decision, the cantonal authorities may request "advice" which will be given in the form of recommendations, or request a written confirmation from the Central Authority in which it agrees to the surrender of the child to the applicant parent (beneficiary of the return order). Moreover, the Central Authority encourages the courts to precisely fix the details of the return in

the return order itself.

VII. 5. Other sources of information on enforcement

Case law, in particular of the Federal Court, available at
< <http://www.bger.ch/jurisdiction-recht> >.

Sweden

V. 3 Agencies involved in enforcement

a) Interpol Stockholm

National criminal Investigation Department
National Liaison Office
Interpol Stockholm
Box 12256
102 26 Stockholm
Sweden

Telephone: +46 8 401 37 00
Telefax: +46 8 651 42 03
Website: < www.police.se >

b) Stockholm County Police Authority 106 75 Stockholm Sweden

Telephone: +46 8 401 00 00

In particular:

Arlanda International Airport Police
Box 38
190 45 Stockholm-Arlanda
Sweden

Telephone: +46 8 401 53 00

c) National Board of Health and Welfare (central expert and supervisory authority in the sphere of, *inter alia*, social services) 106 30 Stockholm Sweden

Telephone: +46 8 555 530 00
Telefax: +46 8 555 532 42
Website: < www.sos.se >

d) Stockholm County Administrative Court Box 17106 SE-103 62 Stockholm Sweden

Telephone: +46 8 720 90 00
Telefax: +46 8 720 93 00

e) Stockholm District Court

Box 8307
SE – 104 20 Stockholm
Sweden

Telephone: +46 8 657 50 00
Telefax: + 46 8 657 50 03

f) National Courts administration
555 81 Jönköping
Sweden

Telephone: +46 36 15 53 00
Telefax: +46 36 16 57 21

United Kingdom

V. 3 Agencies involved in enforcement

Isle of Man

The Family Protection Unit
Isle of Man Constabulary
Police Headquarters
Glencrutchery Road
Douglas, Isle of Man, IM2 4RG
Telephone: +44 1624 631212

Social Services Division
Department of Health and Social Security
Hillary House
Prospect Hill
Douglas, Isle of Man, IM1 1EQ
Telephone: +44 1624 686179

Office of the High Court
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas, Isle of Man, IM1 3AR
Telephone: +44 1624 685265

Scotland

The Central Authority for Scotland plays an administrative role.

The Central Authority for Scotland
The Scottish Executive
Justice Department
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Telephone: +44 131 244 4827
Telefax: +44 131 244 4848
E-mail: Marcus.houston@scotland.gsi.gov.uk
Website: < www.scotland.gov.uk/childabduction >

Officers of court are also organised via the Court of Session. They will normally be required to search for a child or deliver them to a court.

11 Alva Street
Edinburgh EH2 4PH
Telephone: +44 131 225 9110
Telefax: +44 131 220 2468
Website: < www.ednet.co.uk/~smaso/ >

There is a list of specialised solicitors who deal with child abduction cases in Scotland.

Contact:
Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh EH3 7YR
Telephone: 0044 131 226 7411
Telefax: 0044 131 225 2934
Website: < www.lawscot.org.uk >

United States of America

V. 3 Agencies involved in enforcement

Federal marshals

State and local law enforcement (thousands of offices)

National Center for Missing and Exploited Children

Website: < www.missingkids.org >

51 State Missing Children Clearinghouses

Enforcement of Repatriation Orders in Cases Subject to the Hague Convention

(Returning a child for the purposes of repatriation to another country pursuant to Art. 12 of the Hague Convention on Civil Aspects of International Child Abduction in conjunction with section 37 et seq. of the Law concerning the execution and implementation of certain legal instruments in the field of international family law [*IntFamRVG*])

With effect from 1 March 2005, enforcement in such cases is now based on section 44 *IntFamRVG* and not section 33 Act on Non-Contentious Proceedings (*FGG*) and is to be carried out *ex officio* (section 44(6))!

It is imperative that these measures be carried out with the utmost swiftness; they brook no delay! The conditions under which a child is to be removed should be precisely determined in advance to avoid escalation, the need to use force or the failure of the enforcement measure.

Important telephone numbers

District Court - family court judge:

Competent Youth Office official:

Competent police officer:

Emergency doctor:

Landline/mobile no. of person authorised to return the child:

Interpreter:

Locksmith:

Checklist

- **Is the decision final and no longer subject to appeal?** Pursuant to section 40(1) *IntFamRVG*, the order for the return of a child does not take effect and thus become enforceable **until the decision is final and no longer subject to appeal, unless** the Higher Regional Court (HRC) orders immediate enforcement (section 40(3) *IntFamRVG*).
- **The order for the return of the child must have been served;** the court bailiff may do this when proceeding to enforcement (which only leads to the decision being final and no longer subject to appeal in the case of orders made by the HRC). The order permitting the use of force merely needs to be presented.
- **Use of force against the child only if the court has permitted it** (section 44(3) second sentence *IntFamRVG*). **Use of force against a person obliged to return the child, including search of accommodation also only if permitted by court** (section 44(3) first sentence *IntFamRVG*).
- **Meeting with the competent family court** if anything is unclear or there is an apparent lack of enforcement instructions in the order or regarding the implementation of the enforcement, for example to clarify the issue of the use of force against the child .

Who needs to be present during enforcement? Assistance from whom may be necessary?

- **Consult person authorised to return the child to agree a time for the hand-over** and inquire whether resistance (aggression) is to be anticipated, what normal conduct is or whether there are any other problems (child's health, etc.). Indication to authorised person that the procedure may only be carried out if it is guaranteed that he/she or another authorised person will take custody of the child (section 213a no. 4 Rules Concerning Duties Discharged by Court Bailiffs [*GVGA*]). The latter may be a relative who can stand in for the person authorised to return the child and who may minimise any possible escalation (if at all possible this should be a person the child is familiar with). The Youth Office may also send a representative to the hand-over. The child may also be taken into the care of the Youth Office or the Youth Office may find temporary accommodation for the child. **It is crucial that it is clear before the enforcement to whom the child will be handed over.**
- **Consult competent Youth Office** regarding possible help and to avoid or reduce resistance, to support the person authorised to return the child (cf. section 213a no. 5 *GVGA*). The Youth Office is legally bound to provide support (cf. section 9 *IntFamRVG*).
- **Drawing on the services of the police may be a good idea** (section 44(3) second sentence *IntFamRVG*). At least on call in case needed; immediate intervention may lead to escalation of the situation.
- **Involving /support from a colleague** is a good idea.
- **Place of enforcement:** If it is clear that the hand-over from the person obligated to return the child could lead to massive escalation, it should be decided - possibly by consulting the court - whether another place, for example a kindergarten or school, would be more suitable.

- **Remove the child from the place of enforcement after hand-over** as quickly as possible, without entering into further discussions, and deliver to the person taking custody of the child. The location for the hand-over and the person to whom the child is to handed over is precisely determined in advance. The hand-over may, if necessary, take place at a location that is not the place of enforcement. Possibly co-ordinate this via mobile in advance.
- **Conduct during enforcement:** Calm, confident, professional, firm manner. Always be in control of the situation, don't let anyone else take over the reins. Authoritative and soothing manner, also towards grandparents or other family members. Also, consider in advance how to deal with the press. Preparing a short written statement for the press can be very useful.