

## QUESTIONNAIRE ON PREVENTIVE MEASURES

The questionnaire which appears below is addressed to States Parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and some Non-Governmental Organisations. It should be emphasised that respondents are also invited to identify and comment upon matters concerning preventive measures, which are not addressed specifically in the questionnaire. Where information is available on web sites, please feel free to merely state the web site address.

The Permanent Bureau requests responses to the questionnaire to be sent to the Permanent Bureau, if possible in electronic form. Responses should be received no later than 1 April 2003.

### QUESTIONS

#### A. LEGISLATION AND COURT ORDERS

1. Please give details of any civil legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.

*According to § 49 of Estonian Family Law Act (<http://www.legaltext.ee/text/en/X1017K4.htm>) parents have equal rights and duties with respect to their children. § 52 (1) states that a parent living apart from the child has the right of access to the child. A parent with whom the child resides shall not hinder the other parent's access to the child.*

*Estonian Code of Civil Procedure § 249 (1<sup>1</sup>) states that if possible, the court shall make the decision within six weeks after receiving an application in child abduction case according to the Hague 1980 Convention.*

*Social Welfare Act (<http://www.legaltext.ee/text/en/X1043K3.htm>) § 11 (1) gives possibility for a person to receive counselling from social welfare authorities: counselling is the provision to a person of necessary information about social rights and opportunities for protecting legal interests, and assistance in solving specific social problems in order to contribute towards future coping.*

2. Please give details of any criminal legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.

*In Estonian Penal Code (<http://www.legaltext.ee/text/en/X30068K1.htm>) only abduction of another person's child is considered to be a criminal offence. Parental child abduction is not a crime in Estonia.*

#### *§ 172. Child stealing*

*Concealed or unconcealed kidnapping of another person's child of less than 14 years of age from a person under whose care the child legally is, is punishable by a pecuniary punishment or up to 3 years' imprisonment.*

3. Please give details of any court orders which can be obtained during, for example, divorce or custody proceedings which prohibit, restrict or criminalize removal or retention of a child.

*If there is a case in the court (e.g. a dispute concerning a child), the court may secure an action by a ruling on the application of a party. For example the court may prohibit the*

*defendant from departing from his or her residence or prohibit the defendant to take the child out of Estonia.*

*The court may also note in its judgement, upon rendering judgements dealing with visiting right, that the person is not allowed to take the child out of the country. Once the court has rendered the judgement forbidding the person to take the child out of the country, the interested person shall himself inform the Border Guard Administration of the above judgement, so that the Border Guard could take necessary action.*

4. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained out-of-hours and *ex parte*?

*Not applicable.*

5. Do you have any comments relating to relocation orders?

*No.*

6. Do you have any other comments relating to legislative provisions, court orders or administrative measures including any comments on the effectiveness of these provisions, and how often they are used in practice?

## **B. BORDER CONTROLS**

1. Please give details of any rules or procedures relating to the issuance or withdrawal of passports which may help to prevent removal or retention.

*Not applicable.*

2. Please give details of any rules or procedures relating to the issuance or withdrawal of visas which may help to prevent removal or retention.

**Obligation to Leave and Prohibition on Entry Act, Chapter 5**

<http://www.legaltext.ee/text/en/X30034K5.htm>

*Under the provisions of the rules on visa clause 38 the visa may be refused, if:*

- 1) false data are presented or counterfeit documents used upon application for a visa;*
- 2) the applicant's passport is not in conformity with the established requirements;*
- 3) prohibition on entry to Estonia has been imposed on a foreigner or there are grounds for imposing the prohibition on entry;*
- 4) the purpose for applying for a visa, presented by the foreigner does not tally with the real purpose of visiting Estonia;*
- 5) the foreigner lacks monetary resources to cover the costs of staying in Estonia and leaving from Estonia;*
- 6) the foreigner has stayed in Estonia on the basis of visa longer than 90 calendar days in six months;*
- 7) it is reason to believe that the foreigner intends to violate the visa conditions, stipulated under the rules on visa clause 12;*
- 8) it is reason to believe that the foreigner's stay in Estonia is contrary to the considerations of public order, Estonian national security or protection of Estonian international obligations;*
- 9) other circumstances, excluding issuing of visa become evident.*

*At the same time we have to take into the account that visa is not necessary for:*

- 1) a foreigner who has Estonian residence permit;*

*2) a citizen of a foreign country with whom Estonia has concluded visa-free travel agreement;*

*3) a citizen of the foreign country, in the case of which Estonia has unilaterally waived the visa requirement;*

*4) participants in the organised excursion in accordance with the rules on visa clauses 50 and 51;*

*5) crew members in accordance with the procedure established by the Government of the Republic.*

3. Are you aware of any co-operative arrangements with other States with regard to children who maintain more than one nationality?

*No.*

4. Are there any foreign States which it is possible for nationals from your State to enter without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?

*No.*

5. Are there any foreign States whose nationals can enter your State without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?

*No.*

6. Please give details of any port alert or similar emergency systems which can operate to prevent removal from your jurisdiction including the conditions required to put these procedures into effect.

*If a parent suspects that the other parent may leave the country with the child, he/she should turn to the social welfare department or child protection official of his/her residence that informs the Border Guard and/or the Police.*

7. Please give details of any specific duties on air carriers / ferries relating to the carriage of children.

*Not applicable.*

8. Do you have any other comments relating to border controls, including any comments on the effectiveness of these measures to prevent removal or retention and how often they are used in practice?

*Theoretically a minor should not be allowed to cross the border without the representative of the minor or the written notarised approval of the representative of the minor, unfortunately it does not function so in practical life. It is sufficient when the minor carries a valid passport. Upon adoption of the new Family Law Act, which stipulates the custodial right institution (so far the valid Estonian law does not use the concept "custodial right") the problem should be solved.*

*So far co-operation between the child protection officials and the Border Guard Administration has functioned well, if the need arises to prevent from taking the child across the border.*

### **C. INFORMATION FOR PARENTS**

1. Please give details of any web pages, and provide copies of any brochures, or information packs or similar which contain information or advice on preventive measures and which are available to parents in your State. Who provides this information?

*There is a site connected to the web page of the Ministry of Justice of Estonia:  
<http://oigusabi.just.ee>*

*The page contains explanatory material about the Child Abduction Convention and also information, which authority the parent should contact to in case of child abduction. Today it is available only in Estonian. The information is provided by the Ministry of Justice of Estonia.*

2. When was this information compiled? When was it last updated? How is the information made available?

*The web page was compiled in the beginning of January 2002 and last updated in December 2002. It is updated regularly in every 4-5 months.*

3. Do you have any other comments relating to information for parents, including any comments on whether such information is effective in preventing abductions?

#### **D. TRAINING AND EDUCATION FOR PROFESSIONALS**

1. Please give details of any training or education that is available in your State for professionals (including, Central Authority personnel, lawyers, mediators, police officers, port or airport authorities and social workers) as a means of assisting them to operate preventive measures.

*There have been a couple of seminars for judges since the Child Abduction Convention entered into force for Estonia. During the seminars the Convention and its operation was introduced. The aim was to prepare the judges for possible child abduction cases. An introductory seminar has also been provided for child welfare officers of Tallinn.*

2. Who provides this training and education?

*The training was provided by the Ministry of Justice of Estonia, as the Central Authority in Child Abduction cases.*

3. What form does this training take and how regularly does it occur?

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 preventing abduction?

*The training of child welfare officers has proved to be useful. With their help now people have contacted the Estonian Central Authority for further help. As there has only been one in-coming request, we cannot give any comments on success of the training of judges.*

#### **E. PUBLICITY**

1. Please give details of any means used to publicise the Convention or the work of the Central Authority.

*Look at answers to the section C.*

2. Please give details of any means used to publicise other preventive measures operating in your State.

*Look at answers to the section C.*

3. Do you have any other comments relating to publicity, including any comments on the effectiveness of publicity regarding preventive measures?

## **F. 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 preventive measures. How did this co-operation develop?

*Informal co-operation between the Ministry of Justice and Child Welfare Authorities of Tallinn and between the Ministry of Justice and the Ministry of Social Affairs. Mutual counselling in possible child abduction cases might give certain preventive effect to the co-operation. The co-operation started after the Child Abduction Convention entered into force for Estonia.*

*There is also good co-operation between child welfare authorities and Estonian border guard authority, when preventing a child to be taken over the border.*

2. Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies. How did this co-operation develop?

*Informal co-operation between the Ministry of Justice of Estonia and the Ministry of Justice of Finland. The co-operation developed from a multilateral Phare horizontal project in criminal matters during 2000-2002. Since that the Ministries have kept close contacts in all matters concerning international judicial co-operation.*

3. Please provide details (including contact details, web sites etc.) of all agencies in your State which have a role to play in preventing the removal or retention of children.

Ministry of Justice of Estonia  
International Judicial Co-operation Division  
Tõnismägi 5a  
15191 Tallinn  
Estonia  
Phone: +372 620 8183; +372 620 8190  
Fax: +372 620 8109  
E-mail: [marju.laas@just.ee](mailto:marju.laas@just.ee)  
Webpage: <http://www.just.ee>

Ministry of Social Affairs of Estonia  
Social Welfare Department  
Gonsiori 29  
15027 Tallinn  
Phone: +372 626 9741  
Fax: +372 699 2209  
E-mail: [smin@sm.ee](mailto:smin@sm.ee)  
Webpage: <http://www.sm.ee>

Social Welfare and Health Care Department of Tallinn  
Narva Rd 11d  
10151 Tallinn  
Estonia

Phone: +372 645 7440  
Fax: +372 645 7444  
Email: [sotsiaal@tallinnlv.ee](mailto:sotsiaal@tallinnlv.ee)  
Webpage: <http://www.stamet.ee>

Local social welfare authorities:  
<http://www.riik.ee/en/omavalitsused/>

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

#### **G. OTHER INFORMATION**

1. Please provide any other information which may be relevant to the issue of preventive measures and their effectiveness.
2. Please provide details of any other bodies or authorities in your State who may have information useful to this research.
3. Have you any general comments to make regarding preventive measures?

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