

English translation

REPUBLIC OF CROATIA
MINISTRY OF LABOR AND SOCIAL WELFARE

Directorate of Social Welfare

Class No: 552-01/03-01/11
Register No.: 524-05/3-03-3-3/14

Zagreb, May 15th, 2003

The Hague Conference on International Private Rights
Attn: Mr. William Duncan

Subject: QUESTIONNAIRE ON PREVENTIVE MEASURES
- is hereby enclosed

Dear Sir,

We hereby enclose our Answers to the Questionnaire on Preventive Measures which have been sent to us dated February 25, 2003. We kindly ask you to accept our apologies for the delay in our reply caused by the overwork of our colleges.

As we have stated answering the Questionnaire, the Republic of Croatia is undergoing a phase of an intensive coordination of its legislation with those regulations of the European Community, and the new Family Law will undergo a significant change, especially in relation to the transfer of the authority vested in the Centers of social welfare to the court authorities, and to better the protection of the rights and the welfare of the children.

Respectfully yours,

ASSISTANT TO THE MINISTER
Doc.dr.sc. Nino Zganec

QUESTIONNAIRE ON PREVENTIVE MEASURES

The Answers

A. LEGISLATION AND COURT ORDERS

1. The provisions acting as the deterrent or a prevention to the potential abductor are found in the civil legislation of the Republic of Croatia regulated by the Family Law and the regulation regarding travelling documents. Therefore, the Family Law in its legislation of the parental support regulates the rights of the child to live with the parents, and in the case of a separation of the parents, it regulates the rights of the parents, (excepting some circumstances), to a mutual support of the child.
The legislation on travelling documents requires the parents to give a written permission at the time of applying for the travelling documents for the child. In the case when the parents do not give a consent, the decision on the travelling documents for the child is made by the Center for social welfare, taking into consideration the wellbeing of the child.
2. The child abduction or the abduction of the dependent, and the failure to take the measures to protect the child or the dependent, is punishable under the Criminal law of the Republic of Croatia. Therefore, the non-custodial parent abducting the child from a custodial parent or from another custodial person or an institution to which care and protection the child has been given, is punishable by a fine or a term in prison.
3. The Center for social welfare and the court have an authority to decide on the parent which will be given a custody of the child. The Center for social welfare has an exclusive custody in cases when the child is born to a single parent or in the de-facto relationships, and in the intervening situations in the cases set for the divorce proceeding. In this case a temporary decision on the custody of the child is being made, pending the legal judgement passed down by the court in that divorce proceeding when the custody of the dependent child is also decided upon. Therefore, the decision made by the Center regarding the custody of a child becomes an enforcement enabling the custodial parent to gain an immediate custody of the child. There is no possibility of issuing a temporary decision by the court on the custody of the child while the divorce proceedings are still under the way, since that decision has already been made by the Center for social welfare. The enforcement of this decision largely does prevent the removal or retention of the child since a non-compliance with this decision is a punishable act.
4. The legislation of the Republic of Croatia did not envisage a possibility of issuing court orders out-of-hours or ex-parte in civil proceedings. However, it is possible to issue a warrant in criminal proceedings when the defendant fails to appear or answer the court orders.

5. It is often the case that before the decision is being made in the country of the parent applying for the return of the child, no possibility is given to the other party to participate in the proceeding either in person or via a representative, which, as a rule, becomes a reason for rejecting to accept such a decision of the country in which the application has been made.
6. The current regulations of the Republic of Croatia related to the administrative proceedings alone, (on which the Center for Social Welfare is acting upon) have a set time limits for passing a decision. Unfortunately, the case proceeding have no time limit set for passing down these decisions and in practice these proceedings are long lasting (although the Family Law does ask, as *lex specialis*, for an urgent action in passing down a decision in child support cases). However, we emphasize that a new family law is undergoing a legislative procedure and the authority mostly held by the Center for social welfare will be passed onto the courts to enter court proceedings having a time limit suggested in line with the requirements of the above named Convention.

B. BORDER CONTROLS

1. This question we have answered in question A, point 1.
2. The countries that are issuing visas for permanent residence /immigration do require, as a rule, a consent from both parents for the child leaving a domicile country. When one parent refuses to give such a consent, the Center for social welfare in the Republic of Croatia is authorized to settle the difference of the parents regarding the further support of the child. The decision is made a in the best interest of the child.
3. The Republic of Croatia has no such arrangements in that sense, and these issues are resolved under the law conflict act in particular relation with other States.
4. The citizens of the Republic of Croatia can enter without a passport, but must pass the border control, the Republic of Slovenia, Italy and to some parts of Bosnia & Herzegovina. However, the children are always required to have their own passports.
5. The principal of reciprocity is used with the citizens of the States mentioned under point 4 above.
6. Should a custodial parent, being named so by the court or the Center for social welfare, learn or have a suspicion that the non-custodial parent is attempting to leave the country with the child, the custodial parent has a right to approach the police in order to prevent this from happening. The police will then alert the border control and that parent will be, (if there is sufficient time), stopped at the border. This action is based on the fact that there was a suspicion of committing the punishable act of the child abduction.
7. Should the child (up to the age of 16) be travelling without the parents, the child must be attended to by a grown up person and have the consent of both or one parent, that is the custodial parent, stating the child can travel and leave the country accompanied by that person.
8. In case of child abduction committed by one parent these measures are not effective since the border control is not as strict, and the other parent finds out too late, or reacts too late.

C. INFORMATION FOR PARENTS

1. The Republic of Croatia still does not have a web page nor any brochures nor similar materials containing the information nor advice on preventive measures available to the parents. However, within the authority which they have, the expert workers of the Center for social welfare warn the parents against the unlawful removal or retention of a child, quoting the regulations which are giving the right to both parents to a mutual support of the children. Furthermore, the same information is given to the parents when they approach the police.
2. The answer is negative in view of the answer given under point 1.
3. We hold that the information received by the parents from the expert workers of the Center for social welfare and the police does have a certain preventive effect.

D. TRAINING AND EDUCATION FOR PROFESSIONALS

1. The Ministry for Labour and Social Welfare, as a central body for acting upon the Convention, has organized at the beginning of the December of the last year a two day seminar for the legal family protection team leaders of professional workers from the Center for social welfare of the Zagreb County, how to apply the Convention. Within this seminar there was a talk on preventive measures. Such seminars will also be held within this year for other regions of the Republic of Croatia.
2. The Ministry of Labour and Social Welfare together with the Faculty of Law of the University of Zagreb.
3. It takes the form of a two-day seminar. The seminar organized last year was the first of this kind. Before the end of this year we plan to organize another three seminars.
4. We believe that in our Country an education of the judges working on international proceedings is necessary since we have noticed a non-consistency in their practice.

E. PUBLICITY

1. & 2. Up until now there have been no activities in this line except that the Convention was included into the exam questions for the professionals working within the system of social welfare. We are preparing to include the information on preventive measures and on the Convention itself on the web page of the Ministry for Labour and Social Welfare.
2. It is necessary to say that we have not taken organized activities, until now, on advertising the measures of prevention and that we are working to create an acceptable way of advertising.

F. CO-OPERATION

1. We do not have any formal agreements on co-operation. The ministry for Labour and Social Welfare is, in organizational sense, a central authority of all the Centers for social welfare. The co-operation has, however, developed through practice during regular proceedings on protecting the wellbeing of the children.
2. There are no such agreements. The co-operation has, however, developed through the practice particularly with International Social Service.

3. The Ministry for Labour & Social Welfare, Zagreb, Prisavlje 14, Tel. No. : +385.1.6169-236, Fax. No. : +385.1.6196-534, e-mail contact person is registered by the Secretary of the Conference in Haagu , www.mrss.hr
The Ministry of Justice, Public and Local Administration, Zagreb, Republike Austrije 14, Tel.No.: +385.1.3710-666, the contact person is Sanja Stimac.
The Ministry of the Interior, Zagreb, Ilica 335, Tel.: +385.1.3788-111.
4. There are no difficulties in co-operating between the above named authorities under point 3.

G. OTHER INFORMATION

1. We believe that the preventive measures in protecting children from illegal removal and retention do exist within the legal system of the Republic of Croatia but they are not unified in order to be applicable to the Convention. However, the Constitution of the Republic of Croatia guarantees the freedom of movement to its citizens. This might be in conflict with the responsibility of the parents to support the child including the right of the non-custodial parent to have a contact with the child. Furthermore, as we have already mentioned above, the education of the professional has not been finished, and the public has not been informed in any such measure that the professionals and the public could become aware enough for this subject.
2. We believe there are no other bodies nor authorities that could give you any further information.
3. We have answered this question in point 1, G.