

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.**

The Maltese Act no. XIII of 1999, ratified the two conventions relating respectively to the civil aspects of international Child Abduction and to the recognition and enforcement of custody decisions. According to Section 7 of this Act the First Hall of the Civil Court, which is vested with jurisdiction to hear applications regarding abduction, has the power to give interim directions as it thinks fit in order to secure the minor's welfare or to prevent changes in the circumstances relevant to the determination of the application. An example would be a Court Order to the relevant law enforcement authorities not to allow the abductor from leaving the Maltese islands. Another civil legislative provision which may act as a deterrent to a potential abductor is given by the Maltese Code of Organisation and Civil Procedure which provides for the warrant of prohibitory injunction which may be issued in order to restrain a person from taking a person outside Malta. Once the warrant is filed in Court it is decreed upon immediately by the Maltese law courts and is served immediately to the Principal Passports officer and the Commissioner of Police, the Comptroller of Customs and the Chairman of the Malta International Airport. Obviously, the other party is given a time-limit within which to contest the warrant but in the meantime the warrant is in force and remains so until there is a court order revoking it.

- 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.**

According to the Maltese Criminal Code a person is guilty of abduction if there is violence and there is the intent to abuse or marry such person. Abduction is also punishable as a criminal offence when it is done with intent to traffic a minor for the purpose of exploitation in the production of goods or provision of services. Consequently abduction is prosecuted criminally when committed by a person who had the above-mentioned intentions. However, criminal proceedings can also be instituted by a private party in the case of abduction and so a parent can institute such proceedings against the other parent when abduction is committed, provided he or she lodges a complaint with the police authorities.

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

As already mentioned above the Court can order that a person be prohibited from leaving the islands and such order is usually notified to the Principal Passports Officer, Commissioner of Police, Comptroller of Customs and the Chariman of the Malta International Airport. The Court can also order the confiscation of the passport of the abductor. It can also order that the minor is to be supervised by welfare officers in case there is a danger to the minor's well-being. During separation or custody proceedings the Maltese Court can, on an application for the child's return, declare the removal to be unlawful if it is satisfied that the applicant has an interest in the matter and that the child has been taken from or sent or kept out of Malta without the consent of the person having the right to determine the child's place of residence. A custody order which is inconsistent with an order for the return of an abducted child or with a decision relating to the child's custody ceases to have effect. Moreover a custody decision given in or entitled to recognition in Malta is not a ground for the Maltese Court to refuse to return a child. However the Maltese Court may take account of the reasons for that decision.

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*?

In emergency situations a court usually upholds a warrant of prohibitory injunction to prohibit the abductor from leaving Malta or to avoid that eventuality. This warrant is served on the law enforcement authorities mentioned above, i.e. passports, Commissioner of Police, customs and airport. Other orders may concern the safeguarding of the interests of the child depending on the circumstances of the case in question and taking into consideration the claims made by the Maltese Central Authority in its application to the Court. These orders can be obtained out-of-hours and even *ex parte* by an application to the Court or by a warrant of prohibitory injunction in which the applicant states down clearly the facts and the emergency of the given situation and what consequences of irreparable damage would ensue if the warrant is not upheld.

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

Insofar as relocation orders are concerned it is important that the other parent can actually exercise his visitation rights and that these are appropriate in the light of the future relocation. But once notified of the request for relocation of the minor the person so served should have a time-limit within which he can contest that request if he so desires. Moreover in considering relocation the child's best interests are to be given prime consideration and so it needs to be proved that relocation is in the child's best interests. So, the eventuality that the alternative options which relocation may entail may negatively effect the child, needs to be verified. In relocation orders, the court vested with jurisdiction to make custody and visitation decisions about the child should be expressly stipulated once there is agreement between the parties concerned.

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?

The provisions mentioned above and the orders given by the Courts have the force of law and so are very effective once the law enforcement authorities are alerted as to the urgency and seriousness of the case in question on being served with the relative court order. These provisions are used quite often in cases of separated spouses when one of them tries to remove a minor from Malta without the consent of the other parent.

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.

Insofar as removal or retention is concerned, passports may be confiscated only on order by a competent court of law, either civil or criminal, after consideration of an application to that effect is determined by the same court. The court may either keep the passport itself or else order that it be relinquished in the hands of the Principal Passports Officer or the Commissioner of Police. The court may also order that a child's entry into a person's passport be temporarily without effect or be removed until proceedings concerning the unlawful removal of the minor are decided upon. In the case of a warrant of prohibitory injunction in order to restrain a person from taking a minor outside Malta, this warrant is served on the Principal Passports Officer so that the child is not issued a passport or that his name is not included in one. If a passport is already issued then this will be withdrawn or if the child is included in one, his name will be cancelled from it. In Malta children under 16 years of age must have their own passport. If the child is under 10 years of age then he may be issued with a passport of his own valid for two years, and for 5 years if he is over 10 and under 16 years of age. Both parents, even if separated are required to give their consent by signing the application form in the presence of a recommender. Any changes to the passport concerned are duly notified to the law enforcement officers.

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.

Exempted from having a visa to enter Malta are citizens of Commonwealth countries, U.K. Dependencies, Members of the Council of Europe and citizens of countries with which Malta has bilateral agreements or other arrangements, amongst which there are European countries, Latin American and Asian countries and the United States of America. The Visa Application form must be accompanied by the following documents:-

- a. Applicant's passport which must be valid for over six months from the commencement date of the planned trip and must also include blank visa pages;
- b. Applicant must be in possession of a valid re-entry visa to the next country of destination;
- c. Two identical recent passport size photographs of the applicant;
- d. Applicants who reside in the USA must produce a copy of their alien registration/green card (front and back).
- e. Applicants must produce a copy of their round trip travel bookings and confirmation of possession of a return ticket.

In the case of a transit visa, besides the above-mentioned documents, applicants must also show a confirmed flight or boat trip, leaving Malta on the same day applicant arrives in Malta in transit, but in no case more than 24 hours after arrival in Malta.

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

There are no co-operative arrangements with other states with regard to children who maintain more than one nationality.

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.?

There are no foreign states in which Maltese nationals can enter without a passport or without passing border controls.

- 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.?**

Passports are always required. However citizens of Austria, Belgium, Federal Republic of Germany, France, Greece, Italy, Liechtenstein, Luxembourg, Portugal, Slovenia, Spain, Switzerland and the Netherlands may travel to Malta with a valid identity card provided they are traveling as tourists for stays of up to 3 months. Travellers who take trips of less than 24 hours to another country do not need another visa to re-enter Malta.

- 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.**

As already indicated above, ports, airport, police, customs and passport authorities are always notified with a Court order prohibiting a person from leaving the islands and consequently from removing a minor from Malta. But an application of prohibitory injunction as explained above needs to be filed. Even if a person is not leaving the country imminently still a warrant of prohibitory injunction can be filed and the court will award it if it is satisfied that there is a danger that the minor can be removed wrongfully from Malta and the person against whom the warrant is issued would be enlisted as one who cannot leave without authorisation from the court.

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

When children are travelling alone on aircraft or ferries then usually the staff is alerted to keep a watchful eye and to make the child feel as comfortable as possible.

- 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?**

Border controls, especially where children are concerned, are very effective. Once alerted, the law enforcement authorities would see to it that the minor is not removed illegally. Most often, these border controls are used in the case of minors who are in the custody of one parent who is legally separated from the other parent.

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?**

The Malta Central Authority has compiled information regarding Abducted Children and Recognitions and Enforcement of Decisions Concerning Custody and Restoration of Children which is in the process of being installed on the Ministry of Social Policy official website.

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

Recently.

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

Malta is still in its embryonic stage as regards this Convention. However, anybody who seeks information from the Central Authority is duly served.

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.

Currently, no such training exists.

2. Who provides this training and education?

Not available.

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

Not available.

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?

Recently, personnel working within the Department of Family Welfare attended a Seminar conducted by a lawyer conversant in the Abduction and Recognition and Enforcement of Foreign Decision regarding custody and access of Children.

E. PUBLICITY

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

Information will be appearing soon on the Ministry of Social Policy official website.

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

Not available.

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

No comments.

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?**

Until now, no formal agreements exists. However, recent cases of Abduction have aided in the development of informal cooperation between the local Central Authority, the Attorney's General Office, The Law Courts and the forces of law and order i.e. Police.

- 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?**

No formal cooperative agreements currently exists. However, until now, we have dealt with the Central Authorities of England, Australia, New Zealand and the Netherlands and we are glad to say that co-operation from and with these states was very satisfactory.

- 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.**

One can access websites such as that of the Malta Police Force on the Internet.

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

From the cases dealt with so far by the Malta Central Authority, it can be safely stated that co-operation is the key ingredient for success when dealing with Cases of Abduction.

G. OTHER INFORMATION

- 1. Please provide any other information which may be relevant to the issue of preventive measures and their effectiveness.**

The Malta Central Authority will be, in the near future, providing further information and advice regarding the issue of Child Abduction.

- 2. Please provide details of any other bodies or authorities in your State who may have information useful to this research.**

Not available.

- 3. Have you any general comments to make regarding preventive measures?**

As the adage goes, "Prevention is better than cure". Preventive measures are indispensable if we want to see a reduction in the number of abducted children, thus saving unnecessary hardship on both the abducted children and their parents and, at the same time, utilizing the current resources on those cases which eventually arise.

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.