

Reply by the Swedish Central Authority to the Hague Conference Questionnaire on preventive measures in the context of the 1980 Hague Convention on the Civil Aspects of International Child Abduction

A. Legislation and Court Orders

1. Civil legislative provisions which may act as a deterrent to a potential abductor, or may have a preventive effect.

Chapter six of the 1949 Swedish Parental Code deals with issues concerning custody, residence and contact. Already in the *travaux préparatoires* for the 1983 rewriting of the 6th chapter of the 1949 Swedish Parental Code, it was stated that attempts to sabotage one parent's contact with a child, could lead to reconsideration of a residence decision.

When the Swedish Parental Code was revised a second time in 1998, a prominent section was introduced in chapter six, stating the paramount importance of the principle of the best interests of the child. This section, section 2a, prescribes that the best interests of the child should be of paramount consideration in any orders and decisions regarding custody, residence and contact. The section also states that when deciding what constitutes best interests, special consideration should be given to the child's need of close contact with both parents. Consideration should also be given to a potential risk of abuse, illegal abduction, illegal retention or any other form of harm to the child.

In 1998, the Swedish courts were also given the power to order joint custody even in cases where one of the parents objects to this.

A government committee has been designated to analyse the practice of these rules and investigate means of revision.

Section 15 decrees both parents' common responsibility to satisfy the child's need of contact with the non-resident parent. The resident parent also has a special responsibility to look after the child's interest in contact with any other person who might be close to the child and to provide sufficient information to the non-resident parent in order to promote contact. From the above, the

conclusion can be drawn that parents abducting, retaining or in any other way attempting to oppose a child's contact with the other parent, face difficulties when it comes to all forms of decisions regarding custody, residence and contact.

If there is a severe risk that the health or development of the child will be harmed if the child remains with his or her parents, the court can, on the claim of the social services, put the child in care under the Care of Young Persons Act.

2. Criminal legislative provisions which may act as a deterrent to a potential abductor, or may have a preventive effect.

The paramount statute regarding this issue is chapter 7, section 4 of the Swedish Penal Code from 1962.

This section states that any person who illegitimately separates a child under the age of 15 from her/his parents will be sentenced to a fine or imprisonment for a set period of one year at most. It is also stated that the same rule applies when somebody with shared custody of a child under the age of 15 without good reason high-handedly abducts the child or in any other way gives her/himself the right to the child. If the action is considered serious, the perpetrator should be sentenced to imprisonment, for a set term of six months at least and four years at most. International child abductions are usually considered as serious by the criminal courts.

3. Court orders which can be obtained during , for example, divorce or custody proceedings which prohibit, restrict or criminalise removal or retention

Swedish courts do not have the powers of courts in Common Law countries to make decisions regarding specific problems that may arise during proceedings. The Swedish courts cannot order the submission of passports except as a condition for access. The Swedish Passport Authority, on the other hand, has the power to withdraw children's passports on the request of either custodian. Passports can also be voluntarily left with the police authorities or with a legal advisor.

The court can also make a provisional residence order, access order or sole custody order under chapter six, section 20 of the Parental Code. This can be done *ex officio*. In an access order, the court can decide that contact should only take place in the presence of a third party. The court can also reject an access claim so that the parent who is the potential abductor will have no

contact at all with the child. A decision under section 20 can be enforced in the same ways as an order. The court cannot make a decision like this unless the claims of both parties have been heard. The decision is valid until an order, a new decision or an agreement between the parties is made, but can be reconsidered at any time at the request of either party.

4.a. Court orders which can be obtained in emergency situations

In the Swedish law implementing the 1980 Hague Convention, there are two sections which grant the local police authorities and the administrative courts specific powers in dealing with a Hague case. Section 19 states that the court handling the case may order that the child be immediately taken into care by the authorities in any way the court finds suitable. This presupposes that there is a risk that the child will be taken out of the country or that the enforcement of an order will be obstructed. In addition to this, the court can make contact orders.

Under section 20, if there is no time to await an order under section 19, the police can immediately bring the child under care or take any other urgent measures that can be made without harming the child. In these situations, the police must be assisted by a physician and a social worker. The action should be instantly reported to the administrative court, who without delay will decide whether or not it shall stand.

4.b. Can these orders be obtained out-of-hours and *ex parte*?

Orders under section 19 and section 20 of the 1989 implementation act can be made *ex officio* and *ex parte*. There are no possibilities of obtaining an order under section 19 out of hours, but the need for an immediate reaction is satisfied by the power of the police to act under section 20.

5. Relocation orders

There is no institution in Swedish family law that is comparable to relocation orders in Common Law countries. The question of which country the child is to live in is considered to be of such importance that it has to be the custodians' joint decision. Joint custody is also one of the main features of Swedish family law. Only if a parent has sole custody can he or she move abroad with the child against the other parent's wishes. A residence order in Sweden does not refer to a place, but to a person. This means that a residence order in favour of a person already living abroad, or who is openly intending to move abroad, entails a decision in favour of the child living abroad.

6. Comments on legislative provisions, court orders or administrative measures: - the effectiveness of these provisions and frequency of practical use.

The effectiveness of the relevant provisions is considered to be satisfactory.

B. BORDER CONTROLS

1. Rules and procedures relating to the issuance or withdrawal of passports.

All rules and procedures regarding issuance and withdrawal of passports can be found in the 1978 Passport Act and the 1979 Passport Regulation. These are presently under revision.

Issuance

In Sweden, a passport for a child under the age of 18 cannot be issued unless both parents have agreed in writing. This presupposes that they have joint custody. When applying for a passport for a child, the parents must provide the passport authority with documents regarding the child's identity, the identity of the custodians, a written consent by both custodians and a photograph of the child. A photograph is not necessary if the child is under the age of five, but without a photograph, the passport is only valid until the child reaches the age of seven. When a photograph is added to the application, whether or not the child is over the age of five, the child must be present when the application is handed in. If the child can write, he or she must also sign the application.

According to the 1978 Passport Act a passport can be issued even if one of the custodians has not given his/her consent, but only if there are very strong reasons for doing so. In practice however, the rule is applied *very* restrictively. Exemplifying very strong reasons, a passport might be issued even though consent has not been given by both custodians if one of the custodians cannot be reached and where it is obvious that a consent would have been given.

If a passport application is handed in and the parents are not in agreement, the passport authority must ask for the opinion of the social authorities unless it is obvious that the application will be granted.

If a person is wanted by the police, arrested, under a travel ban or on parole, a passport cannot be issued. If a person is not yet wanted by the police, but is

still suspected on reasonable grounds of a crime incurring at least six months' imprisonment, the passport authority must inform the person leading the investigation. A passport must not be issued until a week after this information has been given. This is particularly interesting in cases where the parent is wanted for or suspected of an act which falls within the scope of chapter 7, section 4 of the Penal Code (See A:2). Usually, however, the abducting parent already has a passport, and therefore the regulations regarding withdrawal of passports are more relevant.

Withdrawal

The system of withdrawal of passports follows that of issuance. Hence, a parent fearing for the abduction of his/her child can apply for a withdrawal of the child's passport. Unless there are very strong reasons for not withdrawing the passport, the application must be granted. A passport can also be withdrawn for a person who is wanted by the police, under arrest, under a travel ban, on parole or sentenced to a term of imprisonment which has not yet commenced. This is particularly interesting in cases where a parent is wanted by the police for having abducted a child with the intent to travel abroad.

The passport authority can choose to make a temporary withdrawal only, if that is the better option in respect of the circumstances. In that case, the passport must be returned as soon as the motive for the withdrawal has ceased to exist or within six months. The passport authority can also choose to limit the passport's validity in respect of expiry and scope.

If a passport is withdrawn, temporarily withdrawn or if the validity has been changed, the owner is obliged to hand in the passport to the passport authority or any other relevant authority at the request of the passport authority. The request can be combined with a threat of penalty. If the passport is already in the care of the authorities, it can naturally be retained there. If a decision on withdrawal of a child's passport is pending at the authority, it has the power to order that the passport be immediately handed in if there is a risk that the child will leave the country before the real decision is made. If there has not been a final decision within a week of the temporary decision, the passport should be returned to its owner.

2. Issuance and Withdrawal of Visas

In Sweden the rules on visas set out in the Schengen Agreement apply. The Schengen Agreement means, *inter alia*, that all EU countries (with the exception of the UK and Ireland) and the EEA countries Norway and Iceland

have opened their borders to each other. A visa granted for one of these countries is also valid for visits to all the others.

Along with the other EU countries Sweden has decided that citizens from certain countries do not need a visa. This means that they can travel into Sweden and stay here without a visa for 90 days. Citizens of all other countries must obtain a visa for entry into Sweden.

Further information can be found on the Foreign Ministry's website: www.ud.se and on the website of the Swedish Migration Board: www.migrationsverket.se. (Choose English or French as your language and click your way on to the relevant pages.)

A visa can be granted only if the purpose of the stay is in accordance with certain requirements. An application will not be granted if it can be assumed that the foreigner will not have sufficient funding for his stay or for his return journey or if it can be assumed that the foreigner does not intend his or her stay to be temporary. The latter can be used to reject a visa application for a child if it can be suspected that the child will be retained in Sweden.

A child cannot obtain a visa on the sole basis of a parent having one. An individual decision will be made on the merits of each specific case.

3. Co-operative arrangements with other states with regard to children who maintain more than one nationality.

We are not aware of any such agreements.

4. Foreign states to which it is possible for nationals from Sweden to enter without a passport or without passing border controls.

In general, Swedish citizens can enter all of the countries in the Schengen area without having to show a passport or passing border controls. Any country within the Schengen area may, however, initiate temporary border controls in relation to the other nations. The Schengen agreement is a multilateral convention signed by all the Nordic countries and all the members of the European Union apart from the United Kingdom and Ireland, which have only agreed to parts of the convention. For more information, we refer to the websites of the Swedish Foreign Ministry and the Swedish Migration Board as mentioned above.

5. Foreign states whose nationals can enter Sweden without a passport or passing border controls.

See section B:4.

C INFORMATION FOR PARENTS

1. Details of web pages, brochures, information packs and similar which contain information or advice on preventive measures and which are available to parents in Sweden. Provider of such information.

The Swedish Central Authority has produced a website, www.ud.se/fragor/civilratt/bortforda/index.htm and an information publication both of which provide information about the Convention and the assistance the Central Authority can give individual parents if a child is unlawfully abducted/retained. The information booklet is distributed to interested members of the general public, in particular to parents who are worried that their child will be unlawfully abducted but also to public agencies, courts of law and to the general public.

Furthermore, the Swedish Central Authority has drawn up a country-specific flyer with information on the Convention which is distributed to those interested.

The National Board of Health and Welfare (the central government expert on and supervisory authority for, *inter alia*, social services) is in the process of drawing up a handbook for its officials and executives. The Board informs us that problems connected with abducted children are discussed in this handbook. It will include extensive information about the Convention, cases under the Convention and cases where the Convention is not applicable. In its handbook the Board stresses the important task of its Family Law Division in informing parents concerned about the Convention's provisions, principles and approach. Major effort should be made to encourage the parents to reach voluntary solutions. In addition to the task of the Social Services Family Law Division being effective when an unlawful abduction/retention has taken place, it must also be assumed to have a preventive effect on unlawful abduction/retentions. The Swedish Central Authority was involved in the formulation of the section on abducted children. Among other things, a meeting with the National Board of Health and Welfare was arranged at the Central Authority.

2. How this information was/is compiled, updated and made available.

The website is continually updated. The most recent update was done in October 2002. The information booklet was compiled in 1999 and has not been revised. The country-specific flyer was drawn up in February 2002.

The National Board of Health and Welfare handbook is in process of being compiled at present. Work on it began in 2002.

3. Other comments relating to information for parents, including comments on whether such information is effective in preventing abductions.

Swedish authorities have a far-reaching service obligation, including the Ministry for Foreign Affairs in its capacity as the Swedish Central Authority for the Convention. The service obligation means giving information, guidance, advice and other assistance to private individuals on matters relating to the authority's sphere of activities.

Officials at the Central Authority have an open telephone line all day, that is to say between 8.00 and 16.30. In some cases the Central Authority also receives visits from individual parents.

In these telephone conversations and meetings, parents may receive, *inter alia*, guidance and advice about everything relating to our activities, including preventive methods. In this connection, parents may be referred to other agencies that play a part in preventing child abductions.

D. Training and education for professionals

A number of judicial seminars for Swedish Judges concerning the 1980 Hague Convention were held during 2000 and 2001. These seminars were organised with the support of the National Courts Administration, a governmental body which assists the national courts in administrative matters. Judges specialised in the Convention and personnel from the Central Authority participated as lecturers. It is anticipated that further seminars will be arranged for Judges.

Personnel from the Central Authority have also participated as lecturers in a number of other national and international seminars, *inter alia* seminars arranged by the Swedish Bar Association and the Universities.

A number of informal meetings have been arranged by the Central Authority with different groups of professionals, *inter alia* social workers and police officers from Interpol.

It is important to underline that the daily work at the Central Authority includes a lot of communication with professionals in the field. The

development and use of informal networks has strategic importance for the sharing of knowledge about the Hague Convention.

The Ministry for Foreign Affairs provides training and education in the 1980 Hague Convention for diplomatic and consular embassy personnel on a regular basis. This is particularly important in respect of personnel shortly to be stationed at Swedish missions abroad.

We have received information that there are ongoing considerations among Swedish Judges who are familiar with Hague cases concerning the organising of international judicial seminars for Judges in Sweden. We have also been informed that The Permanent Bureau will be consulted concerning such international judicial seminars in advance.

The Swedish Central Authority has long-standing and close cooperation with Professor Maarit Jänträ-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 practise at the Central Authority on a regular basis.

E. PUBLICITY

1. Details of means used to publicise the Convention or the work of the Swedish Central Authority.

See above under C.1.

In Sweden, as in other countries, matters concerning child abduction are of great interest to the media. This interest has increased in recent years. Interviews with the Central Authority have appeared in daily papers, and on TV and radio. When the Central Authority answers these questions it is careful to give information about the Convention and what assistance the Central Authority can give in a Convention matter even if the interviewer does not specifically ask about this.

The function of the Central Authority under the Convention is fulfilled by the Ministry for Foreign Affairs. The Ministry intends to keep open house for the general public during the spring. In this connection, the Central Authority is planning to arrange an exposition about child abduction cases and of course also about the Convention. A similar exposition was arranged a few years ago. On that occasion the Central Authority described the Convention and some actual cases were presented.

2. Details of means used to publicise other preventive measures operating in your State

The National Board of Health and Welfare is considering spreading information about the Convention to local social authorities. See above under C.1.

Since 1999 the Swedish Central Authority has had funds at its disposal to facilitate the return of unlawfully abducted and retained children. These funds are also used for preventive purposes, particularly to persuade a parent who has unlawfully abducted/retained a child to return with the child to the country of domicile – before legal proceedings start.

3. Comments relating to publicity, including any comments on the effectiveness of publicity regarding preventive measures

No comment.

F. CO-OPERATION

1. Details of co-operative agreements existing between different agencies within Sweden, either formally or informally, with regard to preventive measures. How this co-operation developed.

Officials at the Swedish Central Authority cooperate with an informal network in their day-to-day handling of cases. The informal network is made up of lawyers, courts, social authorities, the International Social Service (ISS), the police, prosecutors, professors, child psychologists, etc. This informal cooperation has expanded in connection with specific cases and over time.

2. Details of co-operative agreements with other States, either formal or informal between different Central Authorities or agencies. How this co-operation developed.

The Swedish Central Authority has taken part in several international conferences organised by Reunite, a well-reputed British NGO. At these conferences participants exchanged experience of every aspect of child abduction. The Swedish Central Authority recently initiated cooperation with Reunite concerning mediation in cases under the Convention in which children have been abducted from Sweden to the UK.

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

a) Interpol Stockholm

National Criminal Investigation Department
National Liaison Office
Interpol Stockholm
Box 12256
102 26 Stockholm
Sweden

Tel: +46 8 401 37 00
Fax: +46 8 651 42 03
Website: www.police.se

a) Stockholm County Police Authority
106 75 Stockholm
Sweden

Tel: +46 8 401 00 00

In particular:

Arlanda International Airport Police
Box 38
190 45 Stockholm-Arlanda
Sweden

Tel: +46 8 401 53 00

a) National Board of Health and Welfare (central expert and supervisory authority in the sphere of, *inter alia*, social services).
106 30 Stockholm
Sweden

Tel: +46 8 555 530 00
Fax: +46 8 555 532 42
Website: www.sos.se

a) Stockholm County Administrative Court
Box 17106
SE-103 62 Stockholm
Sweden

Tel: +46 8 720 90 00
Fax: +46 8 720 93 00

e) National Courts Administration
555 81 Jönköping
Sweden

Tel: +46 36 15 53 00
Fax: +46 36 16 57 21

f) Epikur - International Social Service (ISS)
Skälbyvägen 134
175 60 Järfälla
Sweden

Tel: +46 8 759 66 78
Fax: +46 8 759 66 72

g) Institute for Psychotherapy and Ethnic Issues
Kungsgatan 54
111 35 Stockholm
Sweden

Telephone/fax: +46 8 24 33 98

4. Other comments relating to co-operation, including any comments on the effectiveness of such agreements?

The Swedish Central Authority considers cooperation of the above-mentioned kind to be very valuable and of crucial importance to be able to comply with the Convention in practice. It is of strategic importance for the processing of child abduction cases that networks are continually developed and extended.

G. OTHER INFORMATION

- 1. Other information which may be relevant to the issue of preventive measures and their effectiveness.**

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- 2. Details of any other bodies or authorities in Sweden who may have information useful to this research.**

Arlanda International Airport Police, Stockholm County Administrative Court
(for information, see above under F3).

- 3. General comments to make regarding preventive measures?**

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