

Hague Conference on Private International law

Questionnaire concerning the operation of the Convention and views on
possible recommendations

Response on behalf of the Central Authority for Greece (Ministry of Justice)

(1) The role and functioning of Central Authorities

General questions

1. Have any difficulties arisen in practice in achieving communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention?

No particular difficulties in communication or co-operation with other Central Authorities have been encountered by the Greek Central Authority.

2. Have any of the duties of the Central Authority, as set out in Article 7, raised any problem in practice?

Certain problems have arisen with respect to the articles 7a (locating of the child) and 7c (voluntary return of the child) [see below (2) 6].

Particular questions

3. What measures are taken by your Central Authority or others to secure the voluntary return of child or to bring about an amicable resolution of the issues (Article 7c)? Do these measures lead to delay?

The solicitors of the Legal Council of the State, whom the Central Authority mandates to commence the proceedings, are instructed to encourage the amicable resolution of the case before it is tried, although with a poor outcome. No particular delay occurs.

4. What measures does your Central Authority take to provide or facilitate the provision of legal aid and advice in Hague proceedings, including the

participation of legal counsel and advisors (Article 7g)? Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions?

The applicants under the Hague Convention enjoy proper and full legal aid provided to them by the Legal Council of the State to whom the Central Authority forwards the file immediately upon receipt. A lawyer is appointed without delay by the Council who performs the necessary legal actions and represents the applicant at court.

5. Does your Central Authority represent applicant parents in Hague proceedings? If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?

The Central Authority has only administrative functions. The legal proceedings and representation of the applicant parents are held by state lawyers, who represent the greek State, which is represented by the Minister of Justice.

6. What obligations does your Central Authority have, and what measures does it take, to ensure that a child returned to your country from abroad receives appropriate protections, especially where issues of (alleged) abuse or violence has arisen?

In cases of alleged abuse or violence, the Central Authority alerts the competent Social Services and the Public Prosecutor's office for minors, provides information to the interested parents on the available legal assistance, as well as the relevant general counseling, and facilitates contact with the authorities in charge. For the undertaking included to a return order, the Central Authority intervenes negotiating with the parents. In cases of violation of the undertakings the enforcement of the Court' s order is forwarded, which provides certain penalties for violation.

7. What arrangements does your Central Authority make for organising or securing the effective exercises of rights of access (Article 7f)?

Legal assistance and information is always available, including the necessary mediation between parents, so as an amicable settlement of the case is achieved.

8. Please comment on any development in relation to the maintenance of statistics concerning the operations of your Central Authority. Has your Central Authority been able to return to the Permanent Bureau annual statistics in accordance with the Hague standard forms? If not, please explain why.

The Central Authority is preparing a program for maintenance of statistics, which will be ready in due time.

9. Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions.

The Central Authority affirms its support for the conclusions of the Special Commissions.

10. Would you support any other recommendations in respect of the particular functions, which Central Authorities do or might carry out, especially with regard to the matters raised in questions 6 and 7 above?

The Central Authority will consider certain particular suggestions, such as the improvement of its financial and staff resources.

(2) Judicial proceedings, including appeals and enforcement issues, an questions of interpretation

1. How many courts and how many judges potentially have jurisdiction to hear an application of the child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judge in each level.

All applications for return are heard at first instance in the one-member Court of first instance, whose decisions are subject to appeal in the Court of

Appeals (three-member). The decision can be reviewed by the Court of Cassation (multi-member).

2. Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts? Are such arrangements being contemplated?

Such arrangements do not exist for the moment, though their introduction is being recently contemplated.

3. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) expeditiously (Article 11) in particular?

a) It is possible for the application to be determined on the basis of documentary evidence alone?

According to the greek Code of Civil Procedure, oral evidence and documentary evidence are of the same worth and both are used in the hearings. If no witnesses appear to the court, the case can be determined on documents alone. The court's decision can be based on adminicular evidence for the system of inquisition is applied to the proceedings.

b) What special measures/ rules exist to control or limit the evidence (particular the oral evidence) which may be admitted in Hague proceedings?

See above 3a.

c) Who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is the control exercised?

The solicitor has the necessary contact with the Central Authority and the applicant for the preparation of the hearing.

d) What appeal is possible from the grant or refusal of a return application, within what time limits do appeals operate, on what grounds and subject to what limitations?

An appeal is always possible irrespective of the result and can be based on procedural or substantial grounds. The appeal must be filed within 30 days from the notice of the order and it is heard in a 3-6 months time afterwards

4. In what circumstances, and by what procedures/ methods, will a determination be made as to whether a child objects to being returned?

According to the article 13 of the Convention, combined with the article 681C of the Code of Civil Procedure (part. par. 3 and 4), the Judge may have a private contact with the child whose opinion may be taken into account depending on the child's maturity. The judge can also order expert evidence to be held if need be.

5. Where the person opposing return raises any other defenses under Article 13 or Article 20, what are the procedural consequences? What burden of proof rests on the defendant? Does the raising of the defenses under Article 13 or 20 in practice lead to delay? What measures, if any, exist to reduce such delay to a minimum?

The procedure is the same. The defendant who bears the burden of its proof raises the defences under articles 13 and 20 during the hearing in the form of an objection. No delay is occurred.

6. Please specify the procedures in place in your jurisdiction to ensure that return orders are enforced promptly and effectively? Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected? Do return orders require separate enforcement proceedings? Is there appeal from such proceedings? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?

Return orders require separate enforcement proceedings, which are routinely invoked and may be appealed as well. If the abducting parent does not comply with the order, he is subject to certain penalties provided by the order, in case of not compliance with it. He is fined with an amount of money escalating to two millions drs. plus imprisonment up to one year. He is ex

officio prosecuted, too, for the abduction of the child. The success of the enforcement proceedings depends on locating of the child. In several cases the child is hidden, despite the consequences for the abducting parent.

7. Would you support any of the following recommendations?

a) Calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.

Further specialisation of courts and judges or lawyers would be rather useless. Court sections dealing with family cases are considered to be sufficient

b) Underscoring the obligation of States parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures

c) Calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of the return applications

d) Calling for firm judicial management, both at trial and appellate levels, of the progress of return applications

e) Calling upon States Parties to enforce return orders promptly and effectively

f) Recommending that the “grave risk” defence under Article 13 should be narrowly construed

b), c) d), e), f) Yes, on the condition that certain measures will be proposed, which will be compatible with the law of the Contracting State.

g) Proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced

The Central Authority of Greece recommends the special training of judges and police in order to improve the effectiveness and the speed in handling and enforcing return orders.

8. Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts.

There have not been any serious developments since 1996 concerning the interpretation by the courts of the Convention concepts, which is generally based on the interpretation of the similar concepts of the domestic law.

(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)

1. To what extent are your courts, when considering a return application, entitled and prepared to employ “undertakings” (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the prompt return of a child? Please describe the subject matter of undertakings required/requested. At what point in the return proceedings are possible undertakings first raised, and how?

At every point of the hearing, undertakings of various nature can be proposed by the parties, which are included in the court's order. The court is also entitled to impose obligations on the parents for the facilitation of the child's prompt return.

2. Will your courts/authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement among the parties and those made at the request of the court?

The form remains the same. They are included in the order, which is being enforced in case of not compliance.

3. To what extent are your courts entitled and prepared to seek or require, or, as the case may be, to grant safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned) to overcome obstacles to the prompt return of a child?

In our jurisdiction such orders are unknown.

4. Is consideration being given to the possible advantages of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, in providing a jurisdictional basis for protective measures associated with return orders (Article 7), in providing for their recognition by operation of law (Article 23), and in communicating information relevant to the protection of the child (Article 34)?

The ratification of this Convention is still pending.

5. Have you experience of cases in which questions have arisen as to the right of the child and/or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?

Such cases have not been encountered.

6. Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

The criminal charges pending in another state and the relevant proceedings fall into the jurisdiction of the said state.

7. Please comment on any experience as a requesting or a requested state, of cases in which the deciding judge has, before determining the application for return, communicated with a judge or other authority in the requesting State and, if so, for what purposes? What procedural safeguards surround such communications?

Contact among Judiciary at different States is not yet established.

8. Has an appointment been made in your country of a judge or other person competent to act as a focus or channel for communication between judges at the international level in child abduction/access cases?

No. The communications are conducted by the Central Authority.

9. Where a child is returned to your country, what provisions for legal aid and advice exist to assist the accompanying parent in any subsequent legal proceedings concerning the custody or protection of the child?

Legal aid is provided, under the scope of the Convention, for securing the right of access of the accompanying parent.

10. Where a custody order has been granted in the jurisdiction of, in favour of, the left behind parent, is the order subject to review if the child is returned, upon the application of the abducting parent?

Custody orders can be always revised, depending on the change of their grounds.

11. Would you support any of the following recommendations?

a) That Contracting States should consider ratification of or to the Hague Convention of 10 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of measures of protection of a child which are attached to return orders.

b) That Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child.

a),c),e) and f) : Yes.

(4) Procedure for securing cross-frontier access/contact between parent and child

1. What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction?

Foreign applicants are entitled to proper legal aid when applying for an access order, under the scope of the Convention.

2. On what basis do your courts at present exercise jurisdiction to:

- a) grant and
- b) modify access/contact orders

Applications for granting or modifying an access order are based on articles 1520 of the Greek Civil Code and 681B, 735 Greek Code of Civil Procedure.

3. What provisions exist for the recognition and enforcement in your jurisdiction of foreign access orders, in particular where the order has been made by a court or other authority of the country of the child's habitual residence? In this context is consideration being given to implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children?

If the order is granted by the Courts of a country signatory to the Luxemburg Convention of 1980 or a bilateral agreement, the order is recognized and enforced according to the provisions of the Convention or the agreement, respectively. Otherwise, foreign orders and court decisions granting custody and access are recognized and enforced according to the procedure and on the conditions described in article 905 §4 Greek Code of Civil Procedure.

4. What, if any, provision exists to ensure that cross-frontier access applications (including appeals) are processed expeditiously?

Such applications are usually processed expeditiously in accordance with the provisional measures proceedings.

5. What facilities/procedures are in place to promote agreement between parents in international access/contract cases?

The judge, before the case is heard, makes an attempt for the amicable settlement of the case.

6. Do your courts in practice accept a presumption in favour of allowing access/contact to the non-custodial parent?

According to the Greek law (art. 1520 of the Civil Code) the non-custodial parent is entitled to have contact with his child, unless grave reasons for refusal exist, concerning the welfare of the child. Access is in practice very rarely denied.

7. What conditions are likely to be imposed on access in respect of a non-custodial abducting parent?

Conditions can be imposed, depending on what reasons justify them. If, for instance, the parent is suspected to flee with the child, he may be obliged to lodge a bond, or the court may order that the access takes place under supervision in a certain place.

8. What information concerning services and what other facilities are available to overseas applicants for access/contract orders?

The Central Authority (and lawyers as well) provides all the relevant information.

9. What problems have you experienced and what procedures exist in your country as regards co-operation with other jurisdictions in respect of:

a. The effective exercise of rights of access in your/in other jurisdiction;

b. The granting or maintaining of access right to a parent residing abroad/in your jurisdiction;

b. The restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

Since the access is granted by the Court, every impediment imposed by the custodial parent, affecting its proper exercise, is regarded as violation of the Court's order, with the above described consequences.

10. What, if any, measures are available to your courts to help guarantee adherence by parents to access conditions (e.g. financial guarantees, surrender of passports)

In practice, access is denied by the custodial parent, unless the order 's conditions are fulfilled.

11. How in practice are access orders enforced?

The enforcement procedure is common for both return and access orders.

12. Would you support recommendations in respect of and of the particular issues raised in the preceding questions? If so, please advise.

Any recommendation should be subjected to former consideration.

(5) Securing State compliance with Convention obligations

1. Please comment upon any serious problems of non-compliance with Convention obligations of which your authorities have knowledge or experience and which have affected the proper functioning of the Convention

The vast majority of the cases under the Convention in Greece concerns the return of the child to its left behind parent who lives abroad. Sometimes the abducting parent hides the child till the whole (including the appellate)

procedure is completed and a final decision is reached. In the meantime, either he bears the severe consequences for the violation of the order or he escapes arrest. .

2. What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with the Convention obligations?

It is checked by the Foreign Office whether the acceding State has a compatible legal system and the necessary background, which can guarantee the compliance with its conventional obligations.

3. Would you favour the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State with a view to assisting them to decide whether or not to accept the accession? What questions would you include?

Yes. Questions, such “as how and on what legal basis the custody and access rights are granted or exercised under your jurisdiction”, “according what proceedings, in what time limit”, “how the foreign and domestic orders are enforced” etc, would be of great help.

4. Are you in favour of an increase in the number of Special Commissions (or similar meetings) to review the practical operation of the Convention? Would you also favour the idea that additional Special Commissions should review particular aspects of the operation of the Convention (for example, the problems surrounding the protection of rights of access, or the issues that arise when allegations of abuse or domestic violence are raised in return proceedings or the practical and procedural issues surrounding direct communications between judges at the international level, or the enforcement of return orders by Contracting States)?

In general, the Central Authority has the opinion that it is crucial to focus on the subject matter of the Convention. Attention should be given, for instance, to certain issues raised in the form of objections during the proceedings. It would be interesting if the various interpretations given by the courts of the member states were collected, so that it would be examined, if they can offer a common ground for the implementation of the Convention. In what ways such elaboration will take place is of less importance.

5. Are there any other measures or mechanisms which you would recommend:

- a) to improve the monitoring of the operation of the Convention;
- b) to assist States in meeting their Convention obligations;
- c) To evaluate whether serious violations of Conventions have occurred?

Coordination between the members states and assistance from the Permanent Bureau would be welcomed.

(6) Miscellaneous and general

1. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention, and on the funding of such activities?

Financial and staff resources available to the Permanent Bureau have to be increased in order to create an effective monitoring and enforcement system. We also believe that the Central Authority is willing to encourage judicial cooperation.

2. Are there additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose?

Yes.

3. Would you favour a recommendation that States Parties should, on a regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis?

Yes.

4. Would you favour a recommendation supporting the holding of more judicial and other seminars, both national and international, on the subject matter of the Convention?

Yes.

5. Are there any particular measures which you would favour to promote further ratifications of the accessions to the Convention?

Certain membership criteria should be drawn up.

6. Please provide information concerning any bilateral arrangements made with non-Hague states with a view to achieving all or any of the objectives set out in Article 1 of the Convention.

No relevant bilateral arrangement has been concluded.

7. Do you have any comments on the following proposition?

“Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention was drafted. Courts should be aware that highly restrictive approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention”.

The child's habitual residence is that of its custodial parent. If this parent is Greek and applies for relocation to a greek Court, permission is granted only if the other parent does not object or if the relocation would be in favour of the child. Since the Greek Courts have international jurisdiction to try such cases on the basis of the habitual residence of the child on the greek soil, however restrictive may be their approach to the relocation, and unless the relocation is not combined with an application for the child' s return, it is not perceivable how the operation of the Convention can be affected.