

ANSWERS TO THE QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE CONVENTION AND VIEWS ON POSSIBLE RECOMMENDATIONS

(1) The role and functioning of Central Authorities

- *General questions:*

1. Not any
2. Not any

- *Particular questions:*

3. The judge on the first hearing asks the abducting parent to return the child voluntarily, or to come to an agreement with the other parent. If they can not agree, the judge starts immediately the judicial procedure, so these measures do not lead to delay.
4. Our Central Authority in every abduction case gives a power of attorney to a private attorney who represent the interest of the petitioner during the whole procedure. These cases are automatically free of charge in Hungary, so it does not result any delay. However we have the experiences, that in other jurisdictions, where there are so called “Legal Aid Boards” the judgment of a request for legal aid can take several weeks, or months.
5. No, we give power of attorney to a private attorney and he/she represents the applicant during the whole proceeding.
6. We did not have any case of this type. We have the experience that the foreign court denies the return of the child in all cases where issues of alleged abuse have arisen.
7.
 - a. Yes, we provide all the necessary information.
 - b. When a request for ensuring access rights under the Hague Convention is received by our Central Authority, we give power of attorney to a private attorney, who represents the petitioner free of charge.
 - c. Yes, in some cases, when there is no need of a private attorney, we directly forward the petition to the competent court or guardianship authority.
 - d. Yes we regularly ask for information for the guardianship authority which supervises the practical realisation of access.
 - e. Yes, the same way as mentioned under point b.
8. We returned the statistics in time. All the cases are filed in a computer, so it is quite easy to make statistics on them.
9. Yes, we do support all the conclusions mentioned in the footnotes.
10. The Central Authority of the state which the child has been abducted from (because in most of the cases the left behind parent files his/her petition in that

C. A.) should in every case thoroughly examine the petition and not only forward it automatically to the other state's Central Authority. We have the experience that in several cases it is not clear from the petition, if the petitioner has custody rights, if he/she exercised this right before the removal, if this right is based on court decision or on law etc. To clarify all these questions, we have to contact the petitioner through the other C.A., and this may lead to delay.

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

1. One court have jurisdiction to hear the Hague cases (Central District Court of Pest), and there are practically two judges who receive these type of cases. The appeal level is the Capital Court, there are three judges who receive these type of appeal cases. The concentration of competence to a single court guarantees that the judges proceeding in Hague Convention cases have special knowledge and experience in this field.
2. Yes, art. 3. (2) of the decree no. 7/1988. (VIII. 1) of the Ministry of Justice.
3. Art. 5 and 8 of the above mentioned decree.
 - a. It is possible, but practically it never goes this way. The judge orders the return of the child on the basis of documentary evidence if the defender – despite of his/her regular citation.
 - b. Hungarian judges usually do not accept witnesses in abduction cases. They rely on written evidence (such as school certificate, report on living conditions, report of psychologist expert etc.) They always try to finish the procedure in one hearing.
 - c. The Ministry of Justice can ask for information from the court, but it is not a real control. The president of the court controls, that the judges respect the relevant laws.
 - d. An appeal lies against the decision of a court of first instance. Time for appeal is fifteen days from the disclosure of a decision. The decision against which an appeal is lodged as well as the modification requested by the party and its motivation must be indicated in the notice of appeal. A new fact may also be stated in a notice of appeal and it is possible to refer to a new proof or to request the taking of evidence disregarded by the court of first instance. An appeal has delaying force on the enforcement of a decision. The Supreme Prosecutor or the President of the Supreme Court may submit a protest on legal grounds against any final decision passed in a civil case if the decision is unlawful or groundless.
4. The judge personally hears the child at the court if he/she is over 14. Under 14 a psychological expert talks to the child. The hearing by an expert takes about 30 days, because experts belong to an independent organisation.
5. The defendant has to prove that he/she is stating. The judge in every cases tries to bring a decision on the first hearing. See also the answer para 3. b.

6. If the return is ordered the court fixes the date when the abducting person has to surrender the child to the applicant's lawyer or gives a certain period during which the abductor can return the child voluntarily. The court may also contact the public guardianship authority to encourage voluntary return. In the case of voluntary surrender the child is kept in a child care institution until the custodian comes to take him/her home. If voluntary return does not take place the court may fine the abductor by a maximum sum of HUF 100,000 if necessary several times. The court may also request the assistance of the police to enforce the order.
7. a-f. We support all of these recommendations.
8. Not any development occurred in the Hungarian jurisdiction since 1996 concerning the mentioned concepts.

(3) Issues surrounding the safe and prompt return of the child

1. "Undertakings" are not known in the Hungarian legal system.
2. Foreign court decisions regarding "undertakings" could be enforced in Hungary only if there was an international treaty in force between the two countries, or there was a reciprocity in this matter.
3. On the request of the parent the guardianship authority or the court can order the protection of the child.
4. Yes, we are considering the advantages of the mentioned Convention.
5. Yes, the police finished the procedure, and stated the lack of crime when the child returned to Hungary.
6. Usually the child returns with the left behind and not with the abducting parent. Later the police stops criminal procedure and withdraws the warrant of arrest issued against the abducting parent.
7. We have no such experience. Usually Central Authorities contact each other.
8. No, it has not been made.
9. The court procedure is exempted from costs with respect to its subject as any procedure in Hungary whose subject is connected with children. Therefore, the foreign applicant when instituting the procedure concerning the custody or protection of the child does not need to apply for granting personal legal aid.
10. Yes, the abducting parent can file such a request at the competent Hungarian court.
11. a. Yes, we are considering the accession to this Convention.
b. Yes, that results also from the Preamble of the Convention
c. Yes (in Hungary there is no impediment of entering to the country on that basis)
d. Yes. (When the child returns to Hungary and there is a criminal procedure against the abducting parent on the basis of the child abduction, the Central Authority informs the Chief Prosecutor's Office that the child is back.)
e. No, we consider that it is the role of the Central Authority.

f. No, we do not consider important the communication of the judges.

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

1. The procedure is exempted from costs with respect to its subject as any procedure in Hungary whose subject is connected with children. Therefore, the foreign applicant when instituting the procedure according to the Hague Convention does not need to apply for granting personal legal aid. (The costs of the retained lawyer shall be covered by the state according to the provisions of the decision passed in the procedure.)
2. a and b.: The Hungarian court has jurisdiction in such cases if the child's domicile or permanent residence is in Hungary.
3. Foreign access order is recognised in Hungary when both the child and the parent has domicile in that foreign country and there is reciprocity existing in this matter between Hungary and that other state.
4. On the basis of para 12 of the decree no. 7/1988 of the Ministry of Justice the Public Guardianship Authority which is competent in access cases has to proceed the case out of turn, without delay.
5. Same as in internal cases. The aim of the guardianship authority or the court is in every case to reach an agreement between the parent. The judge in the first hearing tries to reach a consensus of the parents regarding access/contact.
6. Access right of non custodial parent is based on Act no. IV. of 1954 on Family Law. Non-custodial parent can be deprived from access rights only by court order.
7. It is likely that the judge for a certain period of time does not allow cross-frontier access.
8. The Central Authority inform them on the relevant Hungarian laws. Legal representation before court is free of charge in access/contact cases, so the legal counsel of the foreign applicant is paid by the State.
9. The forms of visitation (maintenance of connection): continuous and periodical, with the right of taking the child along, and the obligation to return it as well as other forms, thus, paying a visit to the child, correspondence, contact on the phone, presentation, the sending of parcel. The following persons have the right of visitation of the child: the parent, the grandparent, furthermore, if they are not living any more or if they are permanently prevented from exercising the right of visitation, the major brother/sister of the child, the brother/sister of the parent and his spouse. An application for the maintenance of connection with the parent can also be made, independently, by the child having already reached the age of 14 years. The Court of guardians or the court proceeding concerning the application for ensuring the right of visitation shall try to achieve an agreement between the parties, also taking into consideration the agreement between the parents and the child older than 14 years, with regard to the way

and frequency and duration of visitation, the handing over and the handing back of the child (place, time, manner), how to proceed when the right of visitation could not be exercised. The agreement of the parties shall be approved by the court of guardians and/or by the court if it is in conformity with the interests of the child and the purposes of access/contact. In the absence of an agreement between the parties, the court of guardians and/or the court shall decide keeping the interests of the child in view, taking into consideration any and all fair and just circumstances. The court of guardians and/or the court shall refuse the application if the applicant beneficiary gravely endangers the bodily, intellectual and moral development of the child. If so requested, the court of guardians and/or the court may order the suspension or limitation of the visitation if it establishes what is prescribed by law. The development of the child is endangered if the parent brings up the child against the other parent and/or wilfully and repeatedly does not comply with the decision relating to visitation.

10. Not any.

11. Enforcement of the right of visitation: On the basis of the decision passed by the court of guardians, the right of access may also be ensured by imposing on the parent an enforcement penalty. If, notwithstanding, the endangering of the development of the child continues to exist, and it can be proved, a lawsuit may be instituted before the court for changing the custody of the child.

12. Not any.

(5) Securing State compliance with Convention obligations

1. ---

2. Each case is examined individually. The decision on accepting a new accession is based on legal and political considerations. We did not meet any problematic case till now.

3. Yes, we do.

4. Yes, we do. It might take 4-5 days each second year.

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(6) Miscellaneous and general

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2. ---

3. Yes, very much.

4. As in Hungary there are only 3-4 judges (in first and appeal level) who deals with Hague cases, and they have good contact with the Central Authority, we don't think it would be important to hold judicial conference for them. (Also because of lack of knowing foreign languages.).

5. ---

6. Not any.

7. Custodial parent can apply for court permission to move abroad with the child(ren) if the other parent does not consent. The Hungarian court's order can substitute for the other parent's consent.