

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

(1) The role and functioning of Central Authorities

- General questions:

Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention? If so, please specify.

Yes, with almost all Central Authorities in Central and Southern America (except for Argentina) and with Mauritius.

Have any of the duties of Central Authorities, as set out in Article 7, raised any problems in practice?

Just at the beginning.

- Particular questions

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

Children's offices at Police Headquarters are mandated to receive statements from the abducting person on his/her willingness to voluntarily return the child. A cooperation agreement was reached with the International Social Service and the I.S.S. staff has been involved over the last few months.

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?

Under Italian law legal aid and advice are not generally necessary since proceedings are promoted by the State's Attorney with the Juvenile Court, a public body which applies the competent Juvenile Court for the petition to be granted or rejected.

However, it is possible for the applicant to seek legal aid and participation of legal counsel for appeal to the Court of Cassation on the basis of an agreement made with I.S.S.

Does your Central Authority represent applicant parent 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 Italian Central Authority is entitled to representation at non-Court stages. In Court the applicant is allowed to appear alone (Juvenile Court) or through a counsel acting for him/her (Court of Cassation). The State's Attorney is legally entitled to represent the child's interest.

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 protection, especially where issues of (alleged) abuse or violence have arisen? In particular, does your Central Authority:

- a ensure that appropriate child protection bodies are alerted;
- b provide information to either parent in respect of legal, financial protection and other resources in your State;
- c facilitate contact with bodies providing such resources;
- d assist in providing any necessary care for the child pending custody proceedings;
- e provide any other support, advice or information to a parent who accompanies the child on return;
- f provide any assistance in ensuring that undertakings attached to a return order are respected.

In order to ensure appropriate protection for a child returning to Italy from abroad the Central Authority usually provides information for local Social Service to provide care for the child as well as for the competent Juvenile Court. The Central Authority, if requested, provides any information, advice or support and facilitates contact between the applicant and bodies providing protection. It cannot however be involved in custody proceedings, as it can have no legal representation in Court of the applicant seeking custody.

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

In particular, in the case of an applicant from abroad, does your Central Authority:

- a provide information or advice;
- b facilitate the provision of legal aid or advice;
- c initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant;
- d assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;
- e assist in cases where modification of existing access provisions is being sought.

The Central Authority usually applies the Juvenile Court having jurisdiction for organising or securing the effective exercise of rights of access. It can however provide information or advice, if requested, and supervise that access terms are enforced correctly after access rights have been established in Court. As mentioned above, on the basis of an agreement the Central Authority often delegates the International Social Service to mediate between parents for effective and fair exercise of rights of access.

8. Please comment on any developments 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 Italian Central Authority tries to continuously improve its statistics from a numerical and qualitative viewpoint. Statistics were circulated at all levels and regularly submitted to the Permanent Bureau. They were recently adjusted to the Hague Conference standard forms and processed anew from 1995, when the Italian Central Authority started its activity, and shall be forwarded to the Permanent Bureau.

9. Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions, as set out in footnotes 11 and 12?

Yes.

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?

Yes.

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

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

In Italy jurisdiction to hear an application for the return of a child lies with Juvenile Courts, 29 in number all over Italy. Orders made by Juvenile Courts can be challenged through appeal with the Court of Cassation: the Court of Cassation has jurisdiction on the whole country.

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?

Cfr (1) above. The Italian Act of Ratification provided that jurisdiction pertain to Juvenile Courts (29).

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

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

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

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 that control exercised?

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?

The Italian Act of Ratification enforced Articles 7 and 11 providing that Juvenile Courts make a decision within 30 days from receipt of application. In particular :

a Yes. Determination can be immediate if all documents are available.

b There are no special measures. Nevertheless, in order to achieve expeditious operation, as recommended in the Convention, Juvenile Courts endeavour to restrict admitted evidence as much as possible.

c Proceedings are the responsibility of the State's Attorneys with the Juvenile Courts. He requests Juvenile Courts to list a hearing, make an order and then to enforce it.

d The only possible appeal, again in view of expeditious operation, is with the Court of Cassation within 60 days from service of order. Grounds of appeal can be only in point of law, since the Court of Cassation is not entitled to review the facts in the matter.

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

In what circumstances in practice will the objections of the child be held to justify a refusal to return? (Please indicate the statutory basis, if any.)

The child's objection can be determined at the hearing or through an investigation by the Juvenile Court. The Juvenile Court shall take the child's objection into account only when he/she reaches manipulation-free age and maturity.

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

If a person raises defences under Article 13 or Article 20 of the Convention, he/she will have to prove them through documentary or testimonial evidence. The raising of defences does not generally lead to delays in procedures since Juvenile Courts construe Article 13 and Article 20 in a very strict way, in that they grant very short time limits to prove circumstances substantiating such defences.

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?

Enforcement of return orders is the responsibility of the State's Attorney with the Juvenile Courts and takes place through not appealable measures. These measures are always enforced with the assistance of Juvenile Social Services; they have in practice always resulted in the child's return, except for one case whereby a plea of unconstitutionality was raised.

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

No.

b underscoring the obligation of States Parties to process return applications expeditiously and making it clear that this obligation extends also to appeal procedures

Yes.

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

Yes.

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

Yes.

e calling upon States Parties to enforce return orders promptly and effectively

Yes.

f recommending that the "grave risk" defence under Article 13 should be narrowly construed

Yes.

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

A special provision should establish a specific enforcing procedure for the Hague Convention.

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

- rights of custody (Article 3 a and Article 5 a);
- habitual residence (Article 3 a and Article 4);
- rights of access (Article 5 b);
- the actual exercise (of rights of custody) (Article 3 b and Article 13 a);
- the settlement of the child in its new environment (Article 12)
- consent or acquiescence to the removal or retention of the child (Article 13 a);
- grave risk (Article 13 b);
- exposure to physical or psychological harm (Article 13 b);
- intolerable situation (Article 13 b);
- fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).

The ratification by Italy of the Hague Convention has led to no developments in the Italian jurisdiction as Italy set up a procedural act (which also ratified the Convention), which is a special act for the application of the Convention. No change occurred in this respect.

(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 return proceedings are possible undertakings first raised, and how?

In case the Juvenile Court makes an order regulating the child's return from Italy to the competent requesting State, it is the State's Attorney with the same Juvenile Court who is also entitled to take any decisions pertaining to the terms of child's return. The State's Attorney shall decide as well upon the terms of child's return which may require some undertakings from the parties in order to facilitate the child's return to its place of habitual residence, taking into consideration also any suggestions from the Court, the applicant or the child itself.

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?

Any undertakings made with foreign Authorities as to child's protective orders may be taken in order to assess the opportunity of enforcing mirror orders in Italy.

3. To what extent are your courts entitled and prepared to seek or require, or as the case may be 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?

Courts make enforceable orders authorizing any acts under Italian law required to return the child to the requesting State. Italian law does not provide for safe harbour orders or mirror orders.

4. Is consideration being given to the possible advantages 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, 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)

Such advantages are currently under examination by the competent authorities in view of the possible ratification of 1996 Convention.

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?

No.

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.

Criminal proceedings against the abducting parent instituted by the Judicial Authority of the country in which the child is to be returned cause reduced implementation of any mediation and feasible agreements between the parties. In particular, we usually request the assistance of the foreign Central Authority in order to envisage any possible protective measures on behalf of the abducting parent (i.e. ad hoc visa).

7. Please comment on any experience, as a requesting or as a requested State, of cases in which the deciding judge has, before determining an 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?



We cannot report of any direct contacts between Italian and foreign Judicial Authorities. Italian courts always consider the documents submitted by the parties and as a consequence also any possible orders made by Judicial Authorities, including foreign ones.

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?

No.

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?

No particular provisions other than the general ones are provided in this matter.

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

An appeal to the competent court is allowed to review orders as to parental authority and custody of the child returned to Italy.

11. Would you support any of the following recommendations?

a that Contracting States should consider ratification of or accession to 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, to provide a basis for jurisdiction, recognition and enforcement, and co-operation in respect of measures of protection of a child which are attached to return orders.

Yes.

b. that Contracting States 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.

No.

c. that Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.

Yes.

d. that Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child's abduction/unlawful retention by a parent in cases where the return of the child is to be effected by judicial order or by agreement.

No.

e. that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the institutional level communications between judges or between a judge and another authority.

No.

f. that the Permanent Bureau of the Hague Convention on Private International Law should continue to explore practical mechanism for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development.

No.

(4) Procedures 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?

Legal aid is available. A special agreement with the International Social Service has been made as to filing appeals to the Court of Cassation.

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

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

Under Italian domestic law.

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?

Articles 64 and et seq. of Law n° 218/1995.

"Bruxelles" E.U. Regulation as to European countries.

Ratification of the Hague Convention of 19 October 1996 is currently under perusal.

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

Available provisions are the same as those ensuring expeditious return proceedings as provided by Law n° 64 of 14 January 1994 which ratified also the Hague Convention of 25 October 1980.

Usually, exequatur is not required (Law n° 218/1995). Only appeals to the Court of Cassation are available.

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

Usually, Central Authorities themselves act as mediators between the parents, thus encouraging them to reach an agreement.

However, as already mentioned above, Italian Central Authority has made an agreement with the International Social Service aiming at, among other purposes, mediation between the parents in order to help them reach an agreement which is to be subsequently homologated by the competent judge.

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

Yes.

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

Contacts to take place in a protected context under the supervision of ad hoc personnel.

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

Both our Central Authority and the International Social Service (by virtue of the above mentioned agreement) can currently facilitate contacts between the child and the non-custodial parent.

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

- a the effective exercise of rights of access in your/in the other jurisdiction;
- b the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;
- c the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

As already mentioned above, the most applied procedures are those provided by both the Hague and the European Conventions of 1980.

The main problems, both in Italy and abroad, do not concern the recognition of access rights, yet their effective enforcement when judicially recognized.

Italy has tried and solved these difficulties by charging an international agency (i.e. the International Social Service) to act also in the stage of access rights.

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)?

Italian courts seldom apply coercitive measures; they usually prefer to apply mediation through Children Social Services. They can also avail themselves of the International Social Service.

11 How in practice are access orders enforced?

As mentioned above, the enforcement of orders granting or regulating access rights is substantially based on parental cooperation. In case of parental non-compliance with provisions, judges usually apply to Social Services and hardly ever have recourse to coercitive measures.

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

Enforcement of orders (more specific conditions).

#### (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.

Yes. The conduct of some States adversely affected the good operation of Hague Convention.

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 Convention obligations?

The Ministry of Foreign Affairs is entitled to make such verifications in Italy.

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?

No.

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)?

Yes.

5 Are there any other measures or mechanisms which you 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 Convention obligations have occurred?

We suggest to establish short and easy forms on specific matters to be regularly submitted to all ratifying States (this form, in fact, is neither short nor simple).

(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 finding of such activities?

No.

2 Are there any 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?

No.

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?

No.

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

It depends on which measures.

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.

We have been trying in vain to make bilateral agreements with Egypt and other Arabian countries.

7 Do you have any comments on the following propositions: "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."

We have never experienced any relocation cases, so we cannot assess Court case-law in this matter.