

HAQUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION
OF THE CONVENTION
AND VIEWS ON POSSIBLE RECOMMENDATIONS
RESPONSE OF THE DELEGATION OF THE REPUBLIC OF CYPRUS

(1) The role and functioning of Central Authorities¹

- *General questions:*

- 1 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.

Communication with a Central Authority was difficult in one case because it had not made available a telephone or fax number at the time.

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

No, not so far.

- *Particular questions:*

- 3 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?

The Central Authority requests the Office of the Attorney General to initiate proceedings immediately, including the filing of an ex parte application to prevent the child from being removed away from Cyprus until the final determination of the return application. As soon as the interim order for the removal of the child is given, usually on the same day of the filing of the application, the Central Authority communicates with the abducting

¹ Conclusion IV of the first Special Commission called upon States to:

"... give their Central Authorities adequate powers to play a dynamic role, as well as the qualified personnel and resources, including modern means of communication, needed in order expeditiously to handle requests for return of children or for access". (Overall Conclusions of the Special Commission of October 1989 on the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, February 1990, Conclusion IV at p. 45.)

Conclusion 3 of the second Special Commission to review the operation of the Convention was as follows:

"The Central Authorities designated by the States Parties play a key role in making the Convention function. They should act dynamically and should be provided with the staff and other resources needed in order to carry out their functions effectively." (Report of the second Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, June 1993, Conclusion 3 at p. 16.)

parent and discusses voluntary return. If he is willing then either an order by consent is issued by the Court or he is allowed to return and then the application is withdrawn.

- 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 7 g)? Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions?

A foreign applicant in Cyprus is represented by a Counsel of the Republic who belongs to the Office of the Attorney General of the Republic. The application before the Court filed by the Counsel of the Republic, is made by the Minister of Justice and Public Order on behalf of the foreign applicant. Therefore, despite the fact that no legal aid is available in civil cases in Cyprus, foreign applicants under the Convention do not have any legal expenses to cover.

Delays owing to legal aid processes can occur in cases where we sent requests.

- 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?

Yes, since the applicant on the petition is the Minister of Justice and Public Order on behalf of the foreign parent, though the case before the Court is handled by the Counsel of the Republic. This has not given rise to any difficulties or conflicts with other functions of the Central Authority.

- 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 protection, especially where issues of (alleged) abuse or violence have arisen?² In particular, does your Central Authority:

² Respondents are reminded of the discussions which took place during the third Special Commission (see Report of the third Special Commission, *op. cit.* footnote 3, especially paragraphs 57 to 64 and Annexes I to III). The synthesis of that discussion, as drawn up by the Permanent Bureau (see Annex III), was as follows:

¹ To the extent permitted by the powers of their Central Authority and by the legal and social welfare systems of their country, Contracting States accept that Central Authorities have an obligation under Article 7 *h* to ensure appropriate child protection bodies are alerted so they may act to protect the welfare of children upon return until the jurisdiction of the appropriate court has been effectively invoked, in certain cases.

² It is recognised that, in most cases, a consideration of the child's best interests requires that both parents have the opportunity to participate and be heard in custody proceedings. Central Authorities should therefore co-operate to the fullest extent possible to provide information respecting, legal, financial, protection and other resources in the requesting State, and facilitate contact with these bodies in appropriate cases.

³ The measures which may be taken in fulfilment of the obligation under Article 7 *h* to take or cause to be taken an action to protect the welfare of children may include, for example:

- a ensure that appropriate child protection bodies are?

The Central Authority alerts the Department of Social Welfare Services which is responsible for child protection and care issues.

- b provide information to either parent in respect of legal, financial, protection and other resources in your State;

Yes.

- c facilitate contact with bodies providing such resources;

Yes.

- d assist in providing any necessary care for the child pending custody proceedings;

see a) above.

- e provide any other support, advice or information to a parent who accompanies the child on return;

see a) above.

- f provide any assistance in ensuring that undertakings attached to a return order are respected.

The Central Authority suggests that undertakings embodied in a foreign court order for return are recognised in Cyprus under the European Custody Convention even prior to return in case there is doubt that these will be honoured.

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

The same as for return requests.

In particular, in the case of an applicant from abroad,³ does your Central

a) alerting the appropriate protection agencies or judicial authorities in the requesting State of the return of a child who may be in danger;

b) advising the requested State, upon request, of the protective measures and services available in the requesting State to secure the safe return of a particular child;

[c) providing the requested State with a report on the welfare of the child;]

d) encouraging the use of Article 21 of the Convention to secure the effective exercise of access or visitation rights.]”

³ In answering these questions please distinguish where appropriate between:

Authority:

a provide information or advice;

Yes.

b facilitate the provision of legal aid or advice;

Yes.

c initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant;

Yes.

d assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;

Yes.

e assist in cases where modification of existing access provisions is being sought.

Yes.

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 Central Authority will provide the standard statistical information for the years 1997 – 2000. Annual statistics will be made available in the future.

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

a applications pending return proceedings;

b applications following a refusal to return a child;

c applications not made in connection with other proceedings; and

d applications to modify existing access orders.

Please note also that the term "access" should be read as including all forms of contact.

regard to the matters raised in questions 6 and 7 above?

/

(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation⁴

- 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.

All applications for return are heard at first instance in the Family Courts since 1998, when domestic legislation was amended to this effect, following a decision by the Supreme Court of Cyprus which defined that such jurisdiction falls within the co-operation of the Family Courts and not the District Courts which exercised this jurisdiction before 1998. There are two Family Courts, the Family Court of Nicosia-Larnaca-Famagusta and the Family Court of Limassol-Paphos. At the moment there are seven Family Judges, two of which are Presidents. Every Judge can hear alone applications for the return of a child.

- 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?

See question 2 (1) above.

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

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

Yes, in particular in the following cases:

- (i) when the case is undefended.
(ii) when the parties decide not to bring oral evidence or to cross-examine each other on the written affidavits or other documentary evidence.

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

⁴ Delay in legal proceedings has long been identified as a major cause of difficulties in the operation of the Convention. For example, the second Special Commission called upon States Parties to make "all possible efforts ... to expedite such proceedings." (Report of the second Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, June 1993, Conclusion 7 at p. 18.)

Both the Application and the Objection must be accompanied by affidavit evidence, but there is a right to give oral evidence during the trial of the case according to the relevant Rules.

- 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?

The Central Authority of Cyprus, i.e. the Minister of Justice and Public Order, through the Counsel of the Republic from the Office of the Attorney General, appointed for each case.

- 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?

Appeals go to the Family Court of second instance which consists of three judges of the Supreme Court, one of which is the President of the Court. These judges are appointed for the period of two years by rotation (at present there are 13 judges of the Supreme Court). There is no higher jurisdiction than that. The time for notice of appeal is 42 days (6 weeks). An appeal is possible if the judge has misdirected himself in law or the facts of the case

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

The child's refusal to return is normally raised in the objection of the defendant (abducting parent). The Court's first recourse is to direct the Director of the Social Welfare Office to submit a report on the specific question of the child's objections and to what extent he has attained an age and a sufficient degree of maturity for his views to be taken into account. The welfare officer has a meeting with the child and if time permits, he files a written report, failing which he will make it orally at the final hearing. The judge also may have a meeting with the child pursuant to section 6(3) of the Parents and Children Relations Law No 216 of 1990: "According to the maturity of the child and to the degree it may realise, its opinion must be asked and his opinion be valued together with it before any decision regarding the parental care is taken, since the decision concerns its interest."

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.)?

Certainly this is dependable on the age and understanding of the child and of course on whether the views expressed are genuine and not motivated or controlled by the influence of the abducting parent. As to the statutory basis see above paragraph.

- 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?

Without doubt the burden of establishing such a defence rests on the defendant. So far we only had one case under this Convention which was opposed and proceeded to trial resulting in judgement (return order). The defences raised under these Articles resulted in seeking further evidence, including oral, which consequently lead to a few weeks delay in the proceedings. In any event the Judge must consider the case as urgent, give it priority over any other case and decide it without delay. The Court will be assisted by the competent services of the Welfare Officers by giving them instructions to investigate any aspect of the case with the speed required in such cases.

- 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?

If the defendant does not comply with an order he is in contempt of Court. The Family Courts have the power to ensure that orders are complied with, by imposing the imprisonment of the defendant or a fine or both. A return order does not require separate enforcement proceedings. It is immediately enforceable even if an appeal against it is lodged and pending unless it is stayed by the competent Court. In addition, habeas corpus proceedings may be instituted before the Supreme Court (article 154.4 of the Constitution). By a habeas corpus order the defendant may be ordered to produce the child to the Court at a certain time and date, so as to be returned to the applicant. So far only one return order was not enforced because the child and the abducting parent could not be located.

- 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.⁵

⁵ See, for example, Conclusion No 4 of the "De Ruwenberg II" Judicial Seminar (footnote 7, above):

"It is recognised that, in cases involving the international protection of children, considerable advantages are to be gained from a concentration of jurisdiction in a limited number of courts/tribunals. These advantages include the accumulation of experience among the Judges and practitioners concerned and the development of greater mutual confidence between legal systems."

This conclusion was supported by the judges present at the Washington Judicial Conference (footnote 7, above).

Yes. States Parties should consider limiting the number of courts designated to hear abduction cases.

- b* underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.⁶

Yes. There should be more effective steps to accelerate the abduction procedures of Central Authorities and judicial authorities (including appellate procedure) and also for priority to be given for applications under the Convention.

- c* calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.⁷

Yes. See above.

- d* calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.⁸

Yes. This underlines the need for specialist judiciary concentrated in a limited number of courts.

- e* calling upon States Parties to enforce return orders promptly and effectively.⁹

Yes. States Parties should ensure that decisions are speedily and effectively enforced.

- f* recommending that the “grave risk” defence under Article 13 should be narrowly construed.¹⁰

Yes, and the onus of proof for such a defence should be fixed at a high level.

⁶ See, for example, Conclusion No 2 of the Washington Judicial Conference:

“Prompt decision-making under the Hague Child Abduction Convention serves the best interests of children. It is the responsibility of the judiciary at both the trial and appellate levels firmly to manage the progress of return cases under the Convention. Trial and appellate courts should set and adhere to timetables that ensure the expeditious determination of Hague applications.”

⁷ See above, footnote 16.

⁸ See above, footnote 16.

⁹ See, for example, Conclusion No 4 of the Washington Judicial Conference (footnote 7, above):

“It is recommended that State parties ensure that there are simple and effective mechanisms to enforce orders for the return of children.”

¹⁰ See, for example, Conclusion No 5 of the Washington Judicial Conference (footnote 7, above):

“The Article 13 *b* ‘grave risk’ defense has generally been narrowly construed by courts in member states. It is in keeping with the objectives of the Hague Child Abduction Convention to construe the Article 13 *b* grave risk defense narrowly.”

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

We propose the following:

- (i) *A specialised group of lawyers for applicants and judges should deal with Convention cases.*
- (ii) *Convention cases should be given priority by the Courts and also appeals should be tried fast.*
- (iii) *The Police should be enabled to get involved in the enforcement of a return order where the defendant is in contempt of Court.*
- (iv) *Where separate enforcement procedures are necessary, they should be accelerated and grounds for appeals against enforcement orders should be limited.*

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

No opposed applications proceeded to trial.

- rights of custody (Article 3 a and Article 5 a);
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- 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).
- /

(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)¹¹

- 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?

The issue, has not arisen so far. It is viewed that if the Court would face such an issue, it will be prepared to employ some undertakings, to facilitate the return of a child.

- 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?

If the undertakings are embodied in the foreign Court’s decision for return, they can be enforced provided that they are rendered enforceable under the European Custody Convention, prior to the return. Otherwise they may not be implemented if agreement between the parties ceases to exist.

¹¹ The context of these questions is the experience of several States that the majority of return applications now concern (alleged) abduction by the child’s primary caretaker, and that these cases often give rise to concerns about supports available for, or even the protection of, the returning child and accompanying parent within the country to which the child is to be returned. The role played by Central Authorities in this context is covered by question 6 of section 1 of the Questionnaire.

- 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?

The Cyprus Family Courts are entitled and would be prepared to seek mirror orders to assist in the prompt return of the child.

- 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)?

Very much so. This Convention is presently under study with a view to becoming Party to it.

- 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.

In one case the abducting parent (father) who brought the child to Cyprus from the USA was afraid to return to the USA because there was a criminal procedure pending against him there. The father never went back despite consultation between the two Central Authorities involved to solve the problem.

- 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?

So far Cypriot Judges did not have such experience. (But see question 8 below). However, if the issue arises in the future, it is viewed that the family judge before doing so, will ask the parties involved if they have any objections to him contacting his counterpart abroad or the liaison judge in Cyprus. Having spoken to the liaison judge or the foreign judge, the Cypriot Family judge will relay the content of the conversation to the

parties. This appears to be the stand of Great Britain, which it is believed we will adopt.

- 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?¹²

Yes. The Supreme Court of Cyprus on the 19 of May, 2000 has appointed George A. Serghides, the President of the Family Court of Limassol-Paphos, as a liaison judge for the above purposes. That decision followed and fulfilled for Cyprus the proposal of the Rt Hon Lord Justice Thorpe made at the Ruwenberg conference(22-25/6/98) for the construction of a network of Liaison Judges. The Permanent Bureau was informal about this nomination. We would find it of great assistance if other countries would nominate a judge for this purpose.

- 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?

At the moment, legal aid is not available to either parent for private proceedings. An amendment to this effect in domestic legislation is being processed.

- 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?

Yes. According to section 20 of the Parents and Children Relations Law No 216 of 1990, as amended: "Where the circumstances have changed since the date of issue of the judicial decision concerning parental care, the Court, may upon application of one or both of the parents or the Director (of the Welfare Services Department) adjust its decision to the new circumstances by revoking or amending the decision."

- 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.

¹² See footnote 23, below.

- 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.

Yes.

- 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.

Yes.

- e* that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between judges or between a judge and another authority.¹³

Yes.

- f* that the Permanent Bureau of the Hague Conference on Private International Law should continue to explore practical mechanisms for

¹³ See, for example, Conclusion No 1 of the "De Ruwenberg I" Judicial Seminar (footnote 7, above):

"The recommendation was made that, following the example of Australia, judges attending the seminar should raise with the relevant authorities in their jurisdictions (e.g., court presidents or other officials, as appropriate within the different legal cultures) the potential usefulness of designating one or more members of the judiciary to act as a channel of communication and liaison with their national Central Authorities, with other judges within their own jurisdictions and with judges in other states, in respect, at least initially, of issues relevant to the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction."

This recommendation was endorsed in Conclusion No 5 of the "De Ruwenberg II" Judicial Seminar (footnote 7, above), as follows:

"The need for more effective methods of international judicial co-operation in respect of child protection is emphasised, as well as the necessity for direct communication between Judges in different jurisdictions in certain cases. The idea of the appointment of liaison Judges in the different jurisdictions, to act as channels of communication in international cases, is supported. Further exploration of the administrative and legal aspects of this concept should be carried out. The continued development of an international network of Judges in the field of international child protection to promote personal contacts and the exchange of information is also supported."

This conclusion was in turn endorsed at the Washington Judicial Conference (footnote 7, above).

Liaison judges have already been appointed for England and Wales, Australia, New Zealand, Hong Kong and Cyprus.

facilitating direct judicial communications, taking into account the administrative and legal aspects of this development.

Yes.

(4) Procedures for securing cross-frontier access/contact between parent and child¹⁴

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

At the moment there are no provisions for legal aid in civil cases in Cyprus. However if a foreign parent has applied for access in all the cases mentioned in footnote 14 under the Convention, he is free from all legal expenses because he is represented by a Counsel of the Republic (we did not enter a reservation under Article 26).

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

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

All applications for access are heard under section 17 of the Parents and Children Relations Law No 216 of 1990, as amended. The welfare and the interests of the child is the paramount consideration. The character of the Cyprus law on the matter, is child-centred and child-orientated. Section 20 mentioned in question 3.10 above, is also relevant for change of the circumstances.

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?

An order can only be recognised and enforced if it was made in a country which is a Party to the European Custody Convention (Luxembourg) or in a country with which the Republic of Cyprus has concluded a bilateral

¹⁴ The role played by Central Authorities in this context is covered by question 7 of section 1 of the Questionnaire. In answering these questions please distinguish where appropriate between:

- a applications pending return proceedings;
- b applications following a refusal to return a child;
- c applications not made in connection with other proceedings; and
- d applications to modify existing access orders.

Please note also that the term "access" should be read as including all forms of contact.

convention on the matter.

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

Applications for access are dealt with under domestic legislation, i.e. the Parents and Children Relations Law No 216 of 1990, as amended. Because of the nature of the issues, Cyprus Courts consider these cases as urgent, taking however into account always the court's timetable and the urgent character of any other case it comes before them.

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

Mediation services are not available at present. But the Council of Ministers on the 17 of January 2001 decided to approve the introduction in Cyprus of the institution of mediation in family disputes and appointed a committee to prepare legislation for this purpose.

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

The court's paramount concern is the welfare and the interest of the child. Section 17 parag. 1 of the Parents and Children Relations Law No 216 of 1990), as amended, provides that: "The parent with whom the child does not reside preserves the right of the personal communication with him." Cyprus is also a Party to the U.N. Convention on the Rights of the Child. So the answer to question 6, is in the affirmative.

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

- (1) the deposit of a monetary bond or surety,*
- (2) the surrender of passport or travel documents,*
- (3) supervision of contact by a professional or a family member,*
- (4) forbidding overnight visits,*
- (5) restricting the places where visitation may occur,*
- (6) requiring that the requesting parent report regularly to the police or some other authority during a period of contact,*

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

The Central Authority provides such 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 the other jurisdiction;

It seems to us that Cypriot parents, especially fathers, experience difficulties in having effective exercise of their rights of access in foreign jurisdictions. In two or three cases the rights granted to them were limited and the conditions so strict that could be described as discouraging. And in all three cases they were left behind parents. The most unfortunate one is the case where firstly the foreign court ordered the return of the child to Cyprus, then the Cyprus Court permitted the mother to take the child back to her home country and regulated the access rights of the father to the child, but when we sent the order of the Cyprus Court to the foreign country for registration and enforcement under the European Custody Convention so that the father could exercise the access rights (since the mother refused to allow him) the foreign court refused recognition on the ground that such kind of access (visits of the child to the father in Cyprus) was not customary there. The same court allowed a limited number of supervised access.

Co-operation with other jurisdictions on access rights issues is effected through Central Authorities and the International Social Services.

- b the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;

See above.

- c the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

See above.

- 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)?

See question 4.7. above.

- 11 How in practice are access orders enforced?

The Family Courts have the power to fine or imprison those who fail to comply with its orders. However, in family proceedings imprisonment of the custodial parent is a measure of last resort. With the exception of some very rare cases, such a penalty is not in the best interests of any child concerned.

- 12 Would you support recommendations in respect of any of the particular

issues raised in the preceding questions? If so, please specify.

The right of access is equally important with the right of custody. Both are based on the same paramount consideration, the welfare of the child. Perhaps, apart from the domestic mediation services which every State must have, there must be created a European Mediation Service responsible for dealing with all the problems arising from the application of the Convention as regards access issues. This Service would assist not only the Central Authorities but also the judges in their work.

(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.

As regards other countries see question 4.9(a) above.

As regards Cyprus, in some cases we have regrettably experienced slow court processes owing to the tactics of the defendant.

- 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?

N.A.

- 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 enabling others to understand whether the new country would be in a position to implement the Convention.

- 4 Are you in favour of an increase in the number of Special Commissions¹⁵ (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)?

¹⁵ All other things being equal, the approximate additional expenses arising for the annual budget of the Hague Conference would amount to Dfl. 30,000 (for an additional Commission of 3 days every 2 years), or Dfl. 20,000 (every 3 years).

We would favour additional Special Commissions for looking into particular issues on the operation of the Convention.

- 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 Convention obligations have occurred?

We would suggest that the Permanent Bureau should initiate the establishment of a monitoring system.

(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?¹⁶

The activities of the Permanent Bureau are very helpful to us and greatly appreciated. See also 5.5. above.

- 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

¹⁶ The present activities of the Permanent Bureau fall into the following categories:

- a assisting in the maintenance of good communications between Central Authorities, by inter alia seeking and disseminating (through the Hague Conference website and other means) reliable contact data;
- b giving informal advice and assistance to Central Authorities and others on matters of interpretation and procedure under the Convention;
- c drawing the attention of States Parties to, and offering advice about, situations in which obstacles have arisen to the proper functioning of the Convention;
- d offering advice of a general nature and referrals in individual cases;
- e advising Contracting States in relation to implementation of the Convention;
- f organising and supporting training conferences and seminars for judges, Central Authority personnel and practitioners;
- g gathering and evaluating statistics;
- h maintaining INCADAT (the international child abduction database of judicial decisions, available at: www.incadat.com);
- i undertaking preparation and research for the regular periodic reviews of the Convention;
- j the publication of a judicial newsletter as a step towards building an international judicial network;
- k encouraging wider ratification of the Convention.

With respect to many of these activities, no provision is made in the regular budget of the Hague Conference. They therefore depend largely or entirely on extra budgetary funding.

voluntary contributions to accounts set aside for that purpose?

A list of potential activities of the Permanent Bureau will be useful.

- 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 ratification of and accessions to the Convention?

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- 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.

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- 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.”¹⁷

We share the view that restrictive approaches to relocation may have an adverse effect on the operation of the Convention. Already we feel that when the abducting parent is the mother, the foreign courts, especially at first instance, are more and more reluctant to order the return despite the fact that the Cyprus Courts are not reluctant to allow relocation when well founded. In fact we find it a paradox to hear that restrictive approaches to relocation are developing now that the movement of persons universally is easier and better facilitated than ever.

March 2001

¹⁷ Conclusion No 9 of the Washington Judicial Conference (footnote 7, above). A “relocation” case is one in which a custodial parent applies to a court for permission to move permanently, together with the child, to a new country.

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