

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

(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.

The Central Authority for Spain notes that in some States the search and location of the children wrongfully removed raise some problems, probably because the police have other priorities.

We would like to point up that some States hinder the provision of legal aid and advice, including the participation of legal counsel and advisers.

Spain would support measures for a better communication between Central Authorities since progress reports are not regularly provided.

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

The Central Authority for Spain has not encountered any difficulties carrying out the duties set out in Article 7.

Nevertheless, to carry out properly the duties imposed by the Convention, the Central Authority resorts to other institutions responsible of child protection, as the Social Services in the Autonomous Communities or the Prosecutor's Office.

- *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 art 1904 of The Spanish Civil Procedure Code establishes the following:

" The proceedings shall be lodged by means of a petition accompanied by the documentation required under the respective international convention. In a term of twenty four hours the Judge shall rule a decision whereby the person who has abducted or retained the child shall be summoned, with the legal admonitions, to appear at Court with the child, on the date that is

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.)

determined and that shall not be later than the following three days, and shall state:

- a) Whether he/she voluntarily agrees to return the child to the person, institution or organism that holds the right of custody, or otherwise,
- b) Whether he/she objects to return the child for any of the causes established in the respective convention, the text of which will be included with the requirement."

If the left behind parent wants to reach any other kind of agreement it would be necessary to contact the Social Services.

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?

In Spain legal aid is available to those who apply under Article 12 of the Convention or under the Article 21.

Once the child is located, an application is sent to the State Lawyer in the province where the child is living.

The State Lawyer is a civil servant who represents the State in civil and administrative procedures.

We would like to draw the attention to this representation, since we maintain it even with applications from the States that have made the reservation about Article 26.

The Central Authority of Spain considers that, in order to apply the Convention properly and to avoid unnecessary delays, it is essential to grant legal aid immediately to the applicant, without checking their income or the possibilities of success.

Sometimes the applicant chooses a private lawyer. In this case, the Spanish Central Authority will offer advice and assistance but will not be responsible for the judicial proceedings.

These measures do not result in delays in our jurisdiction.

Nevertheless, where Spain acts as a requesting State, legal aid processes can cause delays in the requested State, mostly in those who have made a reservation to Article 26.

The necessity of completing legal aid forms or means and merits tests often delays the procedure and sometimes even hinders the provision of legal aid. The income of the applicant or the possibility of success of the case conditions the right of legal aid and advice.

The central Authority for Spain recommends that States parties should ensure that applicants in Hague proceedings are provided promptly with legal representation at the expense of the requested State.

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?

Spanish Central Authority represents applicant parents in Hague proceedings through the State Lawyers.

However, if the applicant is represented by a private lawyer, the Central Authority offers advice and assistance but is not responsible for the judicial proceedings.

We consider that this role is not giving rise to any conflict or difficulty.

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

The Central Authority for Spain ensures that appropriate child protection bodies are alerted . Once the local Social Services and the Prosecutor Office take part in the welfare of the child, the Central Authority just controls and advises them.

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

The arrangements done by our Central Authority to organise the effective exercise of right of access are the same as those done to guarantee the return of the child.

We provide information and advice and facilitate the provision of legal aid. The applicant has the possibility of being represented by the State Lawyer unless he prefers a private solicitor. We do not take into account the applicant's income to grant legal aid.

The only requirement to provide legal aid is that the child's residence be in the State that requests the right of access.

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) 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.]"

- 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 for Spain has adapted his database in order to comply with the requests of the Permanent Bureau for the annual provision of standard statistical information.

The Central Authority is able to provide the standard statistical information requested by the Permanent Bureau at the end of 2000.

- 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?**

The Central Authority for Spain reaffirms its support for the conclusions reached by the first, second and third Special Commissions.

We would like to point out that Spain has been mentioned in the recommendations of the first Special Commission and since then, the situation has changed positively.

- 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 for Spain will take into account all practical suggestions in order to improve cooperation between Central Authorities.

In particular, the Central Authority for Spain supports the following recommendations:

- States Parties should provide legal aid both in cases of return and in cases of right of access. The legal aid should be automatically provided when the return is denied and the applicant asks for the right of access. In these cases, applicants should not prove again their lack of financial resources since this proof delays the process.

- States Parties should facilitate contact between the children and the left behind parents, through the Social Services, during the process. This measure avoids that the child, in case of return, would feel strange with a person he has not contacted since long time.

(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation³

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 the Spanish legal system, there are a total of 1,555 Magistrates theoretically competent to examine a petition for the return of a minor.

At first instance there is a single level of jurisdiction known as Courts of First Instance, which are distributed throughout Spanish territory in 430 judicial districts. Each Judicial District has one or more Courts of First Instance.

Courts of First Instance specialising in family matters (44 Courts) are based in judicial districts with large populations, normally large cities (with populations of over 200,000). These Courts deal, among other matters, with applications for return of minors filed pursuant to the Convention of The Hague of October 25, 1980.

At second instance, the Provincial Courts have jurisdiction to hear appeals against decisions of First Instance Judges. These Courts are based in the capital cities of the fifty Spanish provinces and act as composite Courts made up of three judges from each Chamber of which they are comprised.

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?

Spain has no special structure established for concentrating applications for return of minors in a limited number of Courts and no changes are planned in this respect, except for what is stated in the previous section relating to Courts of First Instance specialising in family matters.

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

The measures existing in Spain to ensure that applications filed under the Convention are dealt with promptly and urgently are contained in articles 1,901-1,909 of the current Civil Procedural Act governing measures relating to the return of minors in cases of international abduction, introduced by Organic Law 1/96 of January 15th governing legal protection of minors.

In particular:

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

The final decision may be adopted on the basis of the dossier if the person against whom the application is filed does not appear, or appears and agrees to return the minor, or appears and files opposition to the return of the

³ 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.)

minor but fails to propose any evidence whatsoever or proposes evidence which is dismissed by the judge because he considers it useless and unnecessary.

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

The sole restriction or special rule controlling evidence consists of the obligation to submit evidence within a non-extendable term of five days from the initial appearance (article 1,907).

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 Court of First Instance itself, the State Lawyer representing the applicant and the Public Prosecutor's office, since the entire process must take place with the involvement of that office, are responsible for continuing the procedures after the application has been filed, prior to the commencement of the debate.

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 proceedings are subject to preferential processing and such must be carried out within a term of six weeks from the date on which the application for return of the minor was filed before the Judge (article 1,902, last paragraph).

Only an appeal which does not suspend the enforcement of the decision may be filed against a decision on whether or not a minor must be returned. This appeal must be decided within a non-extendable term of 20 days (article 1,908). The law does not establish any restriction on the reasons for lodging an appeal and therefore the same arguments used in the opposition before the Court of First Instance may be put forward.

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.)

Spanish legislation expressly provides that, after the first appearance, the Judge should hear the minor separately, as appropriate, with regard to his or her return. The Judge may also request such reports as he or she may see fit (article 1,907b).

The Judge of First Instance must hear the minor to verify whether or not he or she opposes the return. Nevertheless, the minor's testimony must not automatically or under all circumstances be the sole basis for verification and for that reason psychological or social reports may be requested. These are particularly necessary in the case of minors who have not attained sufficient maturity.

The minor's opposition is taken into account by Spanish Courts when they consider that the minor is old enough and mature enough for his or her opinion to be taken into account, provided that the opposition is firm and originates only from the minor and not from any pressure of the parent who moved him or her.

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 defenses under Article 13 or 20 in practice lead to delay? What measures, if any, exist to reduce such delay to a minimum?

When the person opposing the return files pleas based on articles 13 or 20, the opposition is processed by means of a simple oral hearing to which all interested parties and the Public Prosecutor's office are summoned to put forward such arguments as they may see fit and propose evidence to be furnished, as appropriate, within a non-extendable term of five days (article 1,907a).

It is incumbent on the party invoking these causes for opposition to prove their existence.

In practice, the process of filing the said pleas and proposing evidence may give rise to delays in the proceedings and attempts are made to avoid these delays by establishing a non-extendable term of five days for the submission of the proposed evidence.

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?

In Spain, the basic system to ensure that the decision to return the minor is immediately and effectively enforced consists of a remedy of appeal provided in law which does not suspend the enforcement of the decision ordering the return of the minor. This means that the ruling to return the minor may be enforced while the appeal is pending.

This provision has been criticised by certain legal authors, who consider that if the appeal sets aside the initial decision, then the subsequent decision obtained by the person against whom the application was filed would be impossible to enforce, since the original decision would already have been enforced.

In fact an appeal, as it is contemplated in Spanish legislation, is only of any use if it is filed by the person whose application was refused at first instance.

Decisions to return minors are not subject to a different enforcement procedure, although occasionally the return of the minor is not actually possible when no precautionary measures have been adopted. Specifically, if the abducting parent retains custody of the minor during the processing of the application then he or she may leave the country to avoid enforcement if there is any risk of an unfavourable decision. For that reason it is advisable to

adopt provisional measures, such as granting provisional custody to a third person or institution or withdrawing or marking the minor's passport.

7 Would you support any of the following recommendations?

The following replies are given with regard to support for the recommendations contained in the questionnaire:

a calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.⁴

Yes. In principle we agree, although in order to do so, an important modification of Spanish Legislation would be needed.

b underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.⁵

Yes

c calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.⁶

Yes

d calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.⁷

Yes

e calling upon States Parties to enforce return orders promptly and effectively.⁸

Yes

f recommending that the "grave risk" defence under Article 13 should be narrowly construed.⁹

Yes

⁴ 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).

⁵ 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."

⁶ See above, footnote 16.

⁷ See above, footnote 16.

⁸ 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."

⁹ 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.

Yes

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

There have been no important developments in the Spanish legal system regarding the interpretation of the relevant concepts of the Convention since 1996, although there is an increasing conviction that the pleas contemplated in articles 13 and 20 should be interpreted more restrictively.

This has become necessary with regard to the situation of danger based on actual danger and not only potential danger. It is insufficient to merely invoke the minor's interests and it must be proved by the party opposing the return.

(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)¹⁰

- 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?**

There are no obstacles for the Courts to authorise or to take into account undertakings with the aim of protecting the welfare of the minor and to facilitate the return.

This being said, undertakings are not expressly regulated into the Spanish Legal System so this fact can produce difficulties to guarantee their application.

- 2 Will your courts/authorities enforce or assist in implementing such under-taking 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?**

Spanish Courts could guarantee the application of undertakings if they are in accordance with our legal system and in the best interest of the minor.

No difference is made between undertakings by agreement among the parties and those made at the request of the court.

¹⁰ 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?**

Spanish Courts can adopt custody provisional measures or other protective orders and consider measures adopted by the Court of the requesting State taking them into account in the decision determining the 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)?**

Spain has not yet ratified 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, so Spanish courts do not apply it. Nevertheless we can express our intention to ratify 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?**

As far as we know, the Central Authority for Spain has not experience of cases related to the right of re-entrance the country which the child was abducted or unlawfully retained.

- 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 Spain, child abduction is not consider as a crime but as a civil question so criminal charges are not pending against the abducting parent. At the moment, there is a project of law in our Parliament to criminalize the child abduction.

- 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?**

This Central Authority is not aware of official communications between judges.

- 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?¹¹

No specific person has been nominated.

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?

The accompanying parent can apply for legal aid following the procedure established by the Act of 10th January 1996 on Legal Aid.

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?

The abducting parent can ask for the revision of the custody order in accordance to the Spanish Legal System, and the competent judge will decide about it.

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.**
- 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.**
- 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.**
- 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.**
- 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.¹²**

¹¹ See footnote 23, below.

¹² 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

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

The Spanish Central Authority would support all these recommendations.

(4) Procedures for securing cross-frontier access/contact between parent and child¹³

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

In case of child abduction, foreign applicants are entitled to automatic legal aid. The right of access has been considered widely, so the applicant has the same right to legal aid as if they were asking for the return of the minor.

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

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

Application for access are considered under the Spanish Civil Code.

3 What provisions exist for the recognition and enforcement in your jurisdiction of foreign access orders, in particular where the order has

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.

¹³ 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.

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*?

There are provisions for the recognition and enforcement of foreign access orders in the Spanish Procedure Act.

Spain has signed the Luxemburg Convention on the Recognition of Custody Rights, so orders made by signatory Countries will be recognized by the Spanish judge.

Spain has not yet ratified 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

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

Cross-frontier access applications are processed as expeditiously as possible. This rapidity is conditioned by the court's timetable.

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

Firstly, we should consider Article 1904 of The Spanish Civil Procedure Act that establishes the following:

" The proceedings shall be lodged by means of a petition accompanied by the documentation required under the respective international convention. In a term of twenty four hours the Judge shall rule a decision whereby the person who has abducted or retained the child shall be summoned, with the legal admonitions, to appear at Court with the child, on the date that is determined and that shall not be later than the following three days, and shall state:

- a) Whether he/she voluntarily agrees to return the child to the person, institution or organism that holds the right of custody, or otherwise,
- b) Whether he/she objects to return the child for any of the causes established in the respective convention, the text of which will be included with the requirement."

Also we must point up the role of the Social Services, mainly the International Social Service. In the future we stand the creation of mediation services in Spain.

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 of the child.

The art 94 of the Spanish Civil Code establishes the right of access for the non-custodial parent.

Besides, Spain has signed the International Convention of Children's Rights, that stands the contact of the child with his parents.

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

The non-custodial parent's passport would have to be surrendered. Also, in some cases, a ban to leave the Country would be established.

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

The Ministry of Justice has an Internet page, where applicants can find general information about the Hague Convention and the application form to ask for return or access.

Overseas applicants can also contact the International Social Services to get more information about the situation of the child.

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;

In Spain, the right of access is widely considered, protecting the welfare of the minor and the contact with the parents. We also offer legal aid to the applicants.

Nevertheless, when we have asked for a right of access, we have found obstacles in several Countries. Obstacles that have delayed the procedure and also have hindered the contact of the minor with the left behind parent.

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 7 above.

11 How in practice are access orders enforced?

In our system, there are several measures to enforce access orders. One of them is that the Judge can decide to suspend the order of paying maintenance, that is to say that the parent who is not allowed to visit his children will not be obliged to pay the maintenance established by a judicial decision.

It is also possible that the parent who is not allowed to visit his children asks before the Court for a new decision regarding the custody. In that case the judge can decide to take the child from the custody of the defaulting parent and give the custody to the other parent. However the Judge's decision will depend on the specific case.

Finally, it is possible to start a criminal procedure for disobedience to the authority (art 556 Criminal Code).

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

States Parties should provide legal aid both in cases of return and in cases of right of access. The legal aid should be always provided when the return is denied and the applicant asks for the right of access. In these cases, applicants should not prove again their lack of financial resources since this proof delays the proceeding.

States Parties should facilitate contact between children and the left behind parents, through the Social Services, during the process. This measure avoids that the child, in case of return, would feel strange with a person he has not contacted for a long time.

(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.

We have noticed several problems concerning the functioning of the Convention.

There have been problems with countries that have not designated a central authority.

Concerning some Countries, even if they have designated a central authority, we have problems of communication and understanding.

Sometimes, although communication between central authorities works properly, it is difficult for the applicants to get the return of the minor or the right of access. That happens usually with Countries where applicants are not entitled to legal aid and private lawyers's fees are very high.

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?

This Central Authority is not aware of any specific measures taken before deciding whether or not to accept a new accession.

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, we would find this questionnaire very positive.

We consider essential to include a question concerning the designation of the central authority and the resources aimed to comply with Convention obligations. This acceding State should demonstrate reasonable capacity to comply with the provisions of the Convention and perform its obligations.

4 Are you in favour of an increase in the number of Special Commissions¹⁴ (or similar meetings) to review the practical operation

¹⁴ 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),

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)?

This Central Authority do not consider necessary an increase in the number of Special Commissions. An Special Commission every four years would be enough if all the suggestions made in this questionnaire would be taken into account in order to improve the practical operation of the Convention.

Nevertheless, we are in favour of an increase of seminars and meetings on the subject 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?**

The Central Authority for Spain supports an enforcement of the competences of the Permanent Bureau in order to improve the monitoring of the operation of the Convention and to ensure that member states perform their duties.

(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?¹⁵

or Dfl. 20,000 (every 3 years).

¹⁵ 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.

We support any measure that could improve the functions of the Permanent Bureau. It would be positive but not essential to increase the financial and staff resources. If all the recommendations made about the functioning of the Convention were taken into account, all states parties would notice a real improvement of it.

- 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?**

Any additional aid would be interesting. This Central Authority considers also positive the preparation of a list of potential Permanent Bureau functions.

- 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. We consider very useful the publication of these statistics in the Web page of The Hague Conference.

- 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 and accessions to the Convention?**

We would agree with further ratifications if the States that wish to access are able to fulfil their obligations.

- 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.**

Spain has signed with Morocco the Convention on Judicial Assistance, Recognition and Execution of judicial resolutions on custody rights, right of access and return of minors of 30/5/1997.

- 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.”¹⁶

This Central Authority agrees to that proposition. We consider that flexibility is always positive in relocation cases.

¹⁶ 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.

