



Hague Conference on Private International law

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

Response on behalf of the Central Authority for Finland

(1) The role and functioning of Central Authorities

1. In most cases the cooperation with other Central Authorities has worked smoothly. We find that effectiveness and a cooperative attitude of the Central Authorities are essential in the practical operation of the Convention.

However, delays in starting Convention proceedings and in giving information on a pending case are a problem. In some states even the acknowledgement of receipt of an application takes months.

It should also be emphasized that in order to prevent unnecessary efforts a requested state should be informed as soon as possible of a voluntary return of a child.

In addition, it is very unfortunate that in some states the Central Authorities do not give effective assistance in organising visiting rights, especially after a return procedure. However, this assistance would be crucial for the operation of the Convention: if an abducting parent knows that he/she will have assistance in securing access rights he/she would be much more inclined to return the child. The Central Authorities should cooperate also after a child has been returned. This would contribute to the good reputation of the Convention as well.

It has been noted that in some states the Central Authorities can not give requested information on the law of their State. It has happened that even a requesting authority can not give information on the legal grounds of the application and only forwards the request to the applicant. Naturally, the lack of basic information makes the handling of the matter in the requested State difficult or impossible. Our opinion is that the Central Authorities should act more dynamically and not only as a post box.

2. The Central Authority for Finland has not encountered any difficulties in carrying out its duties.
3. The Central Authority for Finland retains a lawyer for the applicant at the expense of the Finnish State. Primarily the lawyer attempts to bring about an amicable resolution of the issues in negotiating with the adverse party or his/her counsel. This step has not lead to a considerable delay but, on the contrary, often to very positive

solutions.

There are states where the Central Authorities do not seem to take any measures to bring about an amicable resolution but take the case directly to a court. This can not be in line with the purpose of the Convention. All Central Authorities should, as a first duty, ensure that there is a real opportunity for a voluntary return. A short delay for that purpose is worth it.

4. The Central Authority for Finland retains a lawyer for the applicant for Hague proceedings in Finland. Usually this takes less than one week. The legal costs, which may rise to a considerable amount, are met by the Finnish government. If a child has been abducted from Finland to another state the Finnish government may provide financial support to the applicant for the return proceedings abroad provided that legal aid is not available in the requested state.

It has been noted that in some states the procedure to obtain free legal aid may take so long that it does not help the applicant in practice. Besides, in some states the fees for the lawyers paid under the national legal aid scheme are so low that the lawyers are not motivated to deal with these cases seriously.

5. The Central Authority for Finland does not represent applicant parents in the proceedings since it prefers to be neutral and able to give assistance and advice to both parties. This arrangement has been especially profitable when an abductor parent needs the assistance of the Central Authority in organising the rights of access after a return procedure.
6. Until now we have not had such cases. In those cases the Finnish Central Authority could request assistance from the local child welfare authorities within whose competence these protection measures are. The Central Authority could provide necessary information and facilitate contact with the relevant local bodies. The local authorities of the municipality where the child is living are also by law bound to provide all the needed care for the families living in the area. They can, for example, provide shelters for the returning parent and children.
7. The requests concerning rights of access are extremely important and the number of applications is clearly rising. The Convention is quite vague on these matters and accordingly the methods of the Central Authorities are not well established. The attitude to these cases varies a lot among the Central Authorities.

When the Central Authority for Finland receives a request concerning rights of access it attempts to assist the parents to achieve an enforceable agreement on the rights of access. This may be done with the help of the social welfare authorities.

If needed, the Central Authority finds a lawyer for the applicant. The legal costs are met by the applicant or covered by the Finnish legal aid scheme depending on the applicant's income.

If an access order is needed as a consequence of a return order or non-return order the proceedings are cost-free to the applicant irrespective of his or her income.

Naturally, the requested information on the Finnish legal system in these cases is

provided. The Central Authority may also give assistance if the terms of the access are not respected.

8. The Central Authority for Finland has forwarded the annual statistics to the Permanent Bureau. The new standard forms facilitate the annual gathering and maintaining of statistics considerably.
9. Yes, the Central Authority for Finland supports the conclusions.
10. With reference to the experience that Central Authorities treat requests on rights of access differently the Central Authority for Finland would recommend that the “best practices” in carrying out the explicit duties of the Central Authorities when organising the effective exercise of cross-frontier access be drafted.

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

1. At first instance only one court, Helsinki Court of Appeal, has jurisdiction to make decisions on international child abduction. Potentially forty judges may hear an application for the return of a child.
2. Return applications are already concentrated in one court. This arrangement is found very advantageous. It contributes to better understanding and uniform application of the Convention.
3. The applicable internal law obliges the court to consider the Hague applications urgently. If the case has not been resolved within six weeks, the Court of Appeal shall upon the request of the Ministry of Justice or the applicant give an explanation of the circumstances causing the delay in the resolution.

As a rule, the cases are considered on the basis of written material alone. Oral hearings are seldom organised.

The Parliamentary Ombudsman and the Chancellor of Justice are the supreme guardians of the law in Finland. They supervise the authorities’ compliance with the law. They may issue a reprimand to an official, issue instructions on the proper procedure for future reference and, in more serious cases, order that charges be brought against the official in question.

Consequently, in a Finnish case concerning interim precautionary measures related to child custody proceedings where a risk of an international child abduction was alleged the Chancellor of Justice stated in its decision of 1999 (Docket no. 987/1/98) that two months was too long to handle a case concerning interim precautionary measures. The Chancellor of Justice reprimanded the district court in question stating that “matters concerning precautionary measures are, as appropriate to their nature, to be dealt with urgently. In this case an expeditious decision would have been particularly called for, since it was to be deduced from the documents that the mother intended to take the child abroad. In corresponding situations the person hearing the case should make every effort to settle it expeditiously.”

A Court of Appeal decision ordering the return of a child may be enforced at once, even if not yet final. An appeal to the Supreme Court may be lodged within fourteen days from the date of the decision. The grounds of an appeal are not restricted.

4. The opinion of a child is ascertained if it is requested by a party to the return proceedings and if the child is, on the basis of his age and other circumstances known to the court, to be presumed to have attained such a degree of maturity that it is appropriate to take his opinion into account.

If the court finds that a determination of the child's opinion is necessary it requests the social welfare board of the municipality where the child lives to hear the child and to make a written report of the hearing. The determination of the opinion and maturity of the child by the court is normally based on this report.

In practice, it depends primarily on the age of the child whether his opinions are taken into account. For instance, recently a return application concerning a fifteen-year-old child was dismissed on the basis of the child's objection to being returned.

In this context the Central Authority for Finland would like to underline that the opinion of a child should be determined in a very objective manner. Some Contracting States seem to have problems with this. In our view this requirement was not fulfilled in a case where a ten-year-old child was personally heard in the presence of his abducting mother and her new spouse. In addition, the court did not provide proper interpretation. Even if the return applications have to be dealt with expeditiously the courts should ensure that the requirements for a fair trial are met.

5. The party who raises a defence has the burden of proof. Usually, it is difficult to investigate or prove the circumstances in another country. Raising of defences under Articles 13 and 20 may lead to some delay because the other party is normally given an opportunity to take stand to the allegations. However, the court endeavours to handle return matters urgently, and grounds for refusal are applied narrowly.
6. A return order is enforceable at once, even if not yet final. If it is not complied with voluntarily, separate enforcement proceedings are needed. Consequently, it can be enforced through coercive measures by the executive authority. Normally the return orders are enforced as soon as possible after the return order has been given.

There is a possibility to appeal from the individual measures included in the enforcement procedure but an appeal does not interrupt the procedure unless otherwise ordered by a court.

If the return of a child has been ordered on the basis of an application submitted within one year from the wrongful removal of the child (or the failure to return the child), the return order may be left unenforced only if the executive authority determines that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take the child's views into account. In practice, the executive authority is not likely to diverge from the court order as to the maturity of the child in this context. So far the Finnish authorities have been successful in achieving the enforcement of return orders even in very difficult circumstances.

7. Yes, the Central Authority for Finland would support these recommendations. We would also recommend that return applications in big courts be concentrated in a special section. In addition, we would recommend that the judges and social welfare authorities dealing with Hague cases be trained about international child abduction matters.
8. Because of the rather limited number of cases dealt with by the Central Authority for Finland a detailed development history cannot be given. However, in practice the interpretation of the key concepts seems to be regularized. This concerns specially Articles 3 a (habitual residence) and 13 b (exposure to physical or psychological harm). Grounds for refusal are construed narrowly.

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

1. We have very little experience of undertakings in this context. However, it is evident that undertakings that would make it easier for the abductor to return with the child (e.g. arranging or financing an accommodation) may have relevance when a return order is being considered.
2. -
3. The Finnish legal system does not know the concepts of safe harbour order or mirror order.

However, it would be interested in elaborating an idea that a judge ordering a return could, on the basis of the findings of facts during the return procedure, include in the return order some concerns or information that might be relevant to the subsequent proceedings on custody or rights of access. This could help the judge who deals with the case in the country of habitual residence.
5. The Hague Convention of 1996 is potentially a very important instrument. It is likely that Finland will ratify the Convention although the work to that end has not yet started.
6. –
7. The Central Authority for Finland have experience of one case where criminal charges were pending against the abducting parent in the USA where the children were to be returned. With the assistance of the requesting Central Authority and local authorities all criminal charges were dropped as soon as the children were returned.

We would like to underline the significance of an abducting parent being able to re-enter the country from which a child was abducted. The solution of this matter should be given highest priority after an abduction has occurred. The role of the Central Authorities is crucial in these issues.

8. –
9. No specific judge has been appointed.
10. Depending on the income of the applicant he/she may be granted legal aid for subsequent proceedings. This includes the services of a trial counsel. Legal aid may also be granted to persons living abroad.

Legal aid is free of charge for persons of limited means. Other applicants have to pay part of the costs depending on their income. A state legal aid office calculates how much has to be paid, taking into account the incomes of the spouse or persons in cohabitation as well as the size of the family.

The Central Authority will provide further information on legal aid in specific cases and assist in making an application for that purpose.

11. A custody order is always subject to review and may be altered if the circumstances have changed since the issue of the order or if there otherwise is reason therefore.
- 11a-d, f Yes, the Central Authority for Finland would support these recommendations.
- 11 e The Central Authority for Finland has reservations concerning this recommendation. First of all, the division of duties between the Central Authority and the nominated judge should be decided.

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

1. See above, question (3) 9. If a Finnish court has dismissed an application for the return of a child, the left-behind parent may obtain legal aid for access proceedings even independently of his/her financial status.
2. As a rule, a Finnish court has jurisdiction to consider a case relating to child custody or rights of access if the child has his habitual residence in Finland when the case is brought before the court. Under certain conditions a court may consider such case even if the child does not have habitual residence in Finland. In those cases the child has to have a close connection with Finland e.g. by having been habitually resident in Finland during the year preceding the bringing of the case before the court.
3. If a foreign access order has been issued in another Nordic country it can be enforced without assertion of its enforceability in Finland. The application for enforcement shall be addressed to the district court in whose territory the child or the adversary party is resident.

If an order has been issued somewhere else than in the Nordic countries the Helsinki Court of Appeal must assert its enforceability in Finland.

The leading principle in the Finnish provisions regulating the recognition and enforcement of foreign decisions on custody and rights of access is to adopt an accepting attitude to foreign decisions. They are, as a rule, recognised and enforced

in Finland. However, if a decision is evidently contrary to the best interest of the child or if the proceedings have been obviously inappropriate, the decision can be set aside on the grounds for denial of recognition and enforcement provided by the European Custody Convention.

Consideration is being given to the implementation of the 1996 Hague Convention.

4. According to an established practice all applications concerning rights of access have a high priority. There are no specific provisions on applications concerning cross-frontier access.
5. An agreement between the parties may be reached with the aid of the social welfare authorities.

The code of conduct for lawyers imposes the obligation for lawyers to promote agreement between parties instead of taking the case directly to court.

When a case is brought to court the code of judicial procedure obliges the court to endeavour to persuade the parties to settle the case and, under its own discretion, present its suggestions for an amicable resolution of the case in order to further the settlement. This applies both to national and cross-frontier cases.

6. Yes, they do. The principle that a child has the right to maintain contact and meet with the parent with whom he/she no longer resides derives directly from the Child Custody and Right of Access Act. In cases concerning rights of access the applicable law is *lex fori*.
7. If an abduction has taken place or if there is an alleged risk of an abduction and the custodial parent opposes unlimited rights of access to the other parent the court normally orders access only in supervised circumstances.
8. All relevant information concerning access procedures can be received from the Central Authority. It will assist in finding a legal adviser and obtaining legal aid if needed.
9. In some Contracting States an abducting parent has to pay large sums of money to be able to meet the children in supervised conditions. Together with the travel costs the total amount may rise so high that the exercise of the access rights is impossible in practice. There should be a method to avoid this kind of situations.
10. A court may, when issuing an enforcement order, oblige the applicant to do or not to do something. A parent may, for example, be obliged to deposit his or her passport with the executive officer for the period of time when the right of access is exercised.
11. Normally a threat of a fine is imposed. Also fetching the child may be ordered if it is probable that the threat of a fine does not lead to the surrender of the child and if the enforcement is highly important considering the best interest of the child.
12. Procedures securing cross-frontier access should be processed expeditiously. The Central Authorities should act more efficiently in these cases.

(5) Securing State compliance with Convention obligations

1. In some states the courts are very slow to process applications: a return procedure may take up to two years.
2. Finland has so far accepted new accessions unless there is a civil war or a similar disorder in the acceding State. Also other reasons making it quite evident that the acceding State is unable to fulfil its obligations may lead to the acceptance not being given. As a rule however we think that a liberal attitude (“in dubio pro acceptance” – attitude) is appropriate and contributes to establishing the network necessary in child abduction cases.
3. The Central Authority recommends that a standard questionnaire be agreed upon. It would be useful and welcome.
4. We are in favour of an increase in the number of Special Commissions and additional Special Commissions if the needed funding for that purpose is found.
5. All kinds of monitoring and evaluation mechanisms are desirable. Taking into account the limited resources of the Permanent Bureau and Central Authorities this should not, however, have an injurious effect on the proper function of the Convention.

(6) Miscellaneous and general

1. The Central Authority for Finland is very content with the cooperation with the Permanent Bureau and its way of performance. The Permanent Bureau is very efficient especially taking into account the number of its officers. It is a small team whose work is first-class.
2. –
3. Yes, the Central Authority for Finland would favour this recommendation.
4. Yes, provided that the subject is carefully chosen.
5. A work-shop of legal Experts on Promoting Judicial Cooperation with the Russian Federation was held in the Hague in September 2000 by initiative of Finland and the European Union. Finland found this seminar very useful. This model might be successfully used also with respect to other countries. Bilateral consulting and study visits for new State Parties could be helpful as well.
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