Questionnaire on the Operation of the Hague 1980 Child Abduction Convention in the SEE Region

Part. 1. General Issues, Central Authority and Court System

1. When did your State become a party to the Hague 1980 Child Abduction Convention (hereinafter, “HC 1980”)?

2. Was implementing legislation necessary in your State to give effect to HC 1980? If yes, please provide a hyperlink or reference to the legislation.

3. Did your State complete a Country Profile to be made available on the website of the Hague Conference on Private International Law (hereinafter, the “HCCH”)?
   a. If yes, has it been regularly updated? What were the reasons for the update(s)? (e.g., new implementing legislation)
   b. If no, what are the obstacles to regular updating?

4. Has your State become a party to the Hague Convention of 1996 on the International Protection of Children (hereinafter, “HC 1996”)? If yes, is the Central Authority the same for both the HC 1980 and the HC 1996 or are the Central Authorities different?

5. Central Authority contact details:
   a. Are Central Authority contact details publicly available in order to ensure responsiveness and speed in return proceedings? (if so, please provide a web link for these contact details)
   b. Are standardised forms and other useful information accessible to the public?

6. Is your State party to any other convention / instrument (e.g., EU regulations, bilateral agreements) that would fall within the material scope of application of either HC 1980 or HC 1996?
   a. If yes, please provide a hyperlink or reference.
   b. Has doctrine in your State addressed the relationship of HC 1980 and the HC 1996 to other relevant instruments in this field (e.g., European Custody Convention, European Convention on Human Rights, UN Convention on the Rights of the Child)?
   c. Has case law in your State addressed the relationship of HC 1980 and the HC 1996 to other relevant instruments in this field?

7. Would you say that the Central Authority in your State is staffed with adequate personnel? Do the persons working at the Central Authority have the required language skills and possess relevant legal qualifications? Do they benefit from regular training? If yes, please explain (e.g., how many times a year, type of training, etc.).
8. Is your State Central Authority and/or competent authority equipped with a software programme to process, document and/or archive applications and relevant documentation, or do they use a paper archive system? Please explain.

9. Does your State Central Authority and/or relevant competent authority follow the strict timeframes set out under HC 1980?

10. Is the Central Authority of your State operating well with other governmental agencies? Are communications taking place by mail or electronically? Is the Central Authority in your State co-operating effectively with judges?

**Part. 2. Procedures in Relation to the Hague Child Abduction Convention**

**Please explain and provide details and examples on relevant stages of HC 1980 procedures.**

*Application*

11. Does your State Central Authority keep statistics on Hague applications?
   a. If yes, please specify for the period of 2008 to 2013:
      i. The total number of applications,
      ii. The number of access applications,
      iii. The number of return applications,
      iv. The number of applications withdrawn.
   b. If no, please provide an approximate number of applications for at least three calendar years?

12. Do relevant competent authorities keep statistics on Hague procedures?
   a. If yes, please specify for the period of 2008 to 2013:
      i. The total number of procedures per court per year,
      ii. The number of access applications,
      iii. The number of return applications.
   b. If no, please provide an approximate number of Hague cases for at least three calendar years.

13. Has your Central Authority been in a position to review applications and reject them under Article 27?

*Locating the abducted child*

14. Which tools are used by Central Authorities to locate abducted children and to prevent their removal?
   a. What mechanisms or sources of information are available in your State to identify the whereabouts of the child? For example: private location services; population register; employment register; information maintained by other
government agencies (e.g., immigration, social welfare); police; INTERPOL; court orders to compel the production of information on the whereabouts of the child; or, other (please specify).

Protection Measures

15. What measures can be taken in your State to deter the removal or re-abduction of the child? (E.g., child’s passport(s) to be deposited with authorities; alleged abductor’s passport to be deposited with authorities; obtain orders to prevent the removal of the child)
   a. Does the Central Authority of your State use the Guide to Good Practice under the HC 1980 — Part III Preventive Measures? Is it translated into the official language(s) of your State?
   b. Is co-operation with other relevant bodies and public authorities satisfactory?

Domestic Violence and Safe Return

16. Is there concern concerning safe return of a child and protection from domestic violence or other forms of abuse?
17. Have the courts often used Article 13(1) b) to reject the return of a child? Please provide examples.
18. How is the “grave risk of harm” exception interpreted by competent authorities in your State? Please explain.

Hearing, Participation and Objections of the Child

19. Does the child have an opportunity to be heard in return proceedings in your State?
   a. If yes, is it in every case or does it depend on the particular case and the discretion of the judge / authority hearing the case?
   b. How is the child heard in return proceedings in your State? (e.g., direct interview with judge, report prepared by independent expert, child’s own legal representative, or other (please specify)).
   c. Has the issue of the voice of the child been the subject of case law in your State?
   d. Have you encountered cases where the child’s objection under Article 13(2) has been raised?

Enforcement of return orders

20. What procedure may be used to enforce a return order?
   a. Please specify (e.g., directions by a judicial or administrative authority to make arrangements for return, measures for the immediate execution of final orders, issuance of a warrant for the apprehension or detention of the child, authority for coercive detention or use of force, or other) and explain.
   b. Have problems been encountered with enforcement procedures?

Concentration of jurisdiction

21. Does your State limit the number of judicial or administrative authorities who can hear return applications under HC 1980?
a. *I.e.*, has your State “concentrated jurisdiction” in respect of applications under the HC 1980?

b. If possible, please state exactly how many courts or administrative authorities and how many judges or relevant decision-makers can hear return applications under HC 1980?

c. Do you think such “concentrated jurisdiction” would be useful and desirable?

**Procedures**

22. Please list some measures that have been taken in your State to ensure that the judicial and administrative authorities in your State act expeditiously in return proceedings? (e.g., in implementing legislation, in procedural rules, other).

23. What is in general the expected time from the commencement of the proceedings for return to a final order (excluding appeals)? *Up to 6 weeks / 6 to 12 weeks / more than 12 weeks* Please provide details.

24. Do you have concerns that a longer period is needed to process applications? Would implementing legislation and procedural rules for HC 1980 cases make a difference?

25. Is the applicant generally required to participate in the return proceedings?
   a. Are facilities available to enable the applicant to participate in return proceedings from outside of your State? If yes, please specify (e.g., via video-conference, telephone, through a legal representative, other).

26. Rejecting the application.
   a. If a judge in your State rejects an application, what are usually the reasons?

27. Can a return decision be subject to an appeal?
   a. Is there an expedited procedure or special process to appeal HC 1980 return decisions?
   b. What is the expected time within which appeals are filed and decided? *Up to 3 months / 3 to 6 months / Longer than 6 months*
   c. In cases under appeal, what are the main reasons for objection, and are these objections accepted by the appellate courts?

**Mediation**

28. Is mediation and conciliation used in the HC 1980 procedures in your State? Are they recognised as effective tools to settle cross border child abduction?

29. Please describe how Central Authorities in your State go about promoting agreements (e.g., contacting the taking parent, referring parties to mediation) that ended in voluntary return of a child.

30. Do mediation and conciliation mechanisms have a positive impact on the length of proceedings?

**Consideration of basic human rights in relation to HC 1980**
31. Have basic human rights been considered in the case law under HC 1980? Please explain, giving examples.
   a. Is there case law in which the best interests of a child have been considered, in particular in relation to Art. 3 and Art. 12 of the UN Convention on the Rights of the Child?
   b. Have you noticed case law dealing with issues of conflicting individual interests of the child and a parent (in particular, in relation to right to family life, Art. 8. ECHR)?
   c. Do you think that the model of the HC 1980 that preserves the best interests of a child in general is in conformity with overall human rights norms that address the best interests of a child in a particular case? (See, for example, the Neulinger and X. v. Latvia cases.)

**Designation of a Judge to the International Hague Network of Judges (IHNJ) and Direct Judicial Communications**

32. Has a member of the IHNJ been designated for your State?
   a. If yes, please specify the position and court.
   b. If no, is there a legislative basis upon which judges in your State can engage in direct judicial communications? In the absence of legislation, can judges in your State engage in direct judicial communications?

33. Is there a general understanding of the role of the IHNJ and its importance and benefits among judges and relevant authorities responsible for the nomination of a judge to the IHNJ (e.g., Ministry of Justice)?

34. If there is a judge designated to the IHNJ, please provide an example of making use of direct judicial communications in specific cases.

35. Are the judges dealing with HC 1980 cases specialised in family law or international family law? Do they have sufficient training? Do they have the necessary language skills to read foreign case law? Do the judges dealing with HC 1980 cases have the required IT infrastructures such as regular access to the Internet? In your view should training be organised?

36. When you analyse relevant case law, does it appear that judges understand the methodology of cross border cases, apply correct choice of law methods, and find and prove foreign law if relevant?

**Other**

37. Can you identify other obstacles in the proper operation of HC 1980 (e.g., interpretation of the term “habitual residence”, etc.?)

**Part III. A Way Forward**

38. From a general perspective, do you feel that proper application of HC 1980 would be achieved by any particular training? Who should take part in such training?
39. Would the proper application of HC 1980 be achieved with more research and publication in the region? Would you find it useful to publish a handbook dealing with implementation issues? Have handbooks already published by HCCH been translated and used by judicial and administrative authorities handling child abduction cases?

40. After collecting and analysing judicial and administrative case law, could you make a statement on what the best practices in handling HC 1980 applications in your State would be? Can you identify barriers to achieving such best practices?

41. Could you identify points of possible improvements of judicial / administrative practice?

42. Could you suggest methods for ensuring consistent interpretation of HC 1980 in your State / the SEE region?