

INTERNATIONAL CHILD ABDUCTION
UKRAINE STANDARD QUESTIONNAIRE

I Implementing legislation

(a) Is implementing legislation necessary to bring the Convention into force in domestic law?

Yes.

(b) If so, has the necessary legislation been enacted, and is it in force? (Please provide a copy or indicate where copies of the legislation may be obtained.)

In compliance with the Constitution and the Law of Ukraine „On the International Treaties of Ukraine”, Ukraine acceded to the Convention on the Civil Aspects of International Child Abduction according to the Law No 3303 from the 11th of January, 2006. The Law was published in the state edition of the Ukrainian Parliament “Vidomosti Verhovnoy Rady”, issued on the 21st of April, 2006, № 16, p.635, Art.140. The text of the Law is also available on the web-site of the Parliament: www.rada.gov.ua (in the Ukrainian language only).

The Convention entered into force on the 1st of September, 2006.

The Decree of the Cabinet of Ministers of Ukraine from the 10th of June, 2006, № 952 “On Execution in Ukraine of the Convention on the Civil Aspects of International Child Abduction” establishes the procedure of execution of the Convention in Ukraine. The Decree is in force from the 10th of June, 2006. The text of the Decree is also available on the web-site of the Parliament: www.rada.gov.ua (in the Ukrainian language only).

Later there were made some amendments to the Civil Procedural Code of Ukraine, according to which the jurisdiction to consider applications for return and questions of access under the Convention is given to 27 local courts.

Today the Ministry of Justice of Ukraine prepares the draft of the Law of Ukraine “On amendments to the Civil Procedure Code of Ukraine (concerning the cases under Convention on the Civil Aspects of International Child Abduction)” and the draft of the Decree of the Cabinet of Ministers of Ukraine “On amendments to the Order on Execution in Ukraine of the Convention on the Civil Aspects of International Child Abduction”.

II Locating children

Please indicate the agencies involved and the processes available for the location of missing children in your country.

According to the Decree of the Cabinet of Ministers of Ukraine from the 10th of June 2006 № 952 “On Execution in Ukraine of the Convention on the Civil Aspects of International Child Abduction” the Ministry of Justice of Ukraine applies to the organs of the internal affairs, the State Boundary Service in order to establish the whereabouts of the child and an abductor. These authorities take all appropriate measures to establish the whereabouts of the child and an abductor.

The State Boundary Service by the request of the Ministry of Justice provides the information about the time and place of the crossing of the border of Ukraine by the child.

The Ministry of Internal Affairs of Ukraine and its territorial departments take appropriate measures to locate the child and person, who possibly retain the child on the territory of Ukraine.

III Central Authority

(a) The designation and contact details of the Central Authority.

Under Article 6 of the Hague Convention and the Law on the Accession to the Convention in Ukraine the functions of the Central Authority are discharged by the Ministry of Justice of Ukraine.

The address is: 13, Akademika Horodetskogo Street, Kyiv, Ukraine, 01001.
tel./fax: + 380 44 279 56 74 / + 380 44 279 69 77
e-mail: ilatu@minjust.gov.ua, ilad@minjust.gov.ua or
website: www.minjust.gov.ua

The duties imposed by the Convention to the Ministry of Justice are directly executed by the Division on private international law of the Department on Private International Law and International Legal Assistance.

Some functions of the Central Authority according to the Decree of the Cabinet of Ministers of Ukraine from the 10th of June 2006 No 952 are also carried out by the territorial departments of justice (in the oblasts).

(b) Contact persons within the Central Authority, languages spoken, contact details for each.

The contact persons within the Central Authority are:

- Ms. Kateryna Shevchenko, Head of the Department on Private International Law and International Legal Assistance
tel.: +380 44 279-69-77
e-mail: ilad@minjust.gov.ua
Languages: Ukrainian, Russian, English, French
- Mrs. Lyudmyla Ruda, Deputy Head of the Department
tel./fax: + 380 44 279 56 74
e-mail: lruda@minjust.gov.ua
Languages: Ukrainian, Russian, English
- Mrs. Maria Snizhko, Head of the division on private international law
tel./fax: + 380 44 279 56 74
e-mail: snizhko@minjust.gov.ua
Languages: Ukrainian, Russian, English
- Mrs Olha Zozulya, Chief Specialist of the division on private international law
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Languages: Ukrainian, Russian, English
- Ms Nataliia Khvastunova, Chief Specialist of the division on private international law
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Languages: Ukrainian, Russian, English
- Ms Oksana Ilhova, Specialist of the division on private international law
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e-mail: ilatu@minjust.gov.ua
Languages: Ukrainian, Russian, English

(c) Please indicate measures taken to ensure that the Central Authority is in a position to carry out the functions set out in Article 7 of the Convention?

The Decree of the Cabinet of Ministers of Ukraine from the 10th of June 2006 № 952 "On Execution in Ukraine of the Convention on the Civil Aspects of International Child Abduction" determines the mechanism of cooperation between all authorities involved in execution of the Convention in Ukraine.

There were also done some organizational changes in order to make the Ministry of Justice of Ukraine able to execute functions of a Central Authority under Article 7 of the Convention. The division on private international law of the Department on Private International Law and International Legal Assistance provided with an additional staff.

The Ministry of Justice cooperates with the Ministry of Foreign Affairs, the Ministry of Internal Affairs and the State Boundary Service of Ukraine in order to achieve objects of the Convention.

IV Judicial procedures

(a) Which courts/administrative bodies within your system have been given jurisdiction to consider applications for return orders (and questions of access) under the Convention?

The jurisdiction to consider applications for return and questions of access under the Convention is given to courts.

In 2009 there were made amendments to the procedural legislation of Ukraine. According to Article 110 of the Civil Procedural Code of Ukraine the local courts, where the defendant lives or the Ministry of Justice of Ukraine and territorial departments of justice (in the oblasts) are situated, are competent to consider the cases about return and access.

The Ministry of Justice of Ukraine applies with the claims on return and access to the 27 certain courts

Appeal courts (appeal courts of oblasts, of the city of Kyiv and of the city of Sebastopol and the Appeal Court of the Autonomous Republic of Crimea) revise the local courts' decisions in appeal.

The Supreme Court of Ukraine revises the appeal courts' decisions in cassation.

According to the legislation of Ukraine the authorities on tutorship and curatorship are authorized to decide cases about the access to a child by one of a parent, who lives separately. The decision of the authorities on tutorship and curatorship may be revised by the court.

Authorities on tutorship and curatorship act within the state administrations of the districts, districts in the city of Kiev and the city of Sebastopol, executive bodies of the councils in cities, districts in the cities and villages.

(b) What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?

Article 157 of the Civil Procedural Code of Ukraine establishes the time for civil case consideration. A court considers a case during the reasonable period of time, but not more than two months from the day of the opening proceeding.

A court by its ruling can prolong a term of consideration in exceptional cases after an application of a party (parties) taking into account the features of consideration of a case, but no more than on one month.

Article 294 of the Civil Procedural Code of Ukraine establishes the time limits for appeal. The application of appeal can be handed during 10 days from the day of announcement of decision. The appeal against judicial decisions can be handed during 20 days from the day of handing the application of appeal.

The application of appeal against the local courts' ruling can be handed during 5 from the day of announcement of ruling. The appeal (claim) can be handed during 10 days after handing application for appeal.

According to Article 325 of the Civil Procedural Code of Ukraine the cassation can be handed during 2 months after the decision of the appeal court is announced.

(c) What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular is legal aid available and, if so, on what conditions?

In accordance with the Convention on the Civil Aspects of International Child Abduction application before court is handed under the authorization of the applicant by the Ministry of Justice of Ukraine as a Central Authority or by the territorial department of justice (in the oblast).

The legal assistance and consultation in regard with all questions rising from the cases on return or access are available to the foreign applicants. All assistance is free of charge.

In this regard Central Authority of Ukraine definitely requires the authorization of the applicant in accordance to Article 28 of the Convention.

The applicant also can hire private legal representative. The applicant bears costs for engaging and assistance of the private legal representative by himself.

V Enforcement procedures

What procedures and measures exist for the enforcement of:

(a) a return order?

In accordance with Article 124 of the Constitution of Ukraine, judicial decisions are adopted by the courts in the name of Ukraine and are mandatory for execution throughout the entire territory of Ukraine.

The same provisions are provided by Article 14 of the Civil Procedural Code of Ukraine, namely the judicial decisions, which came into force, are mandatory for all state institutions, local governments, businesses, institutions, organizations, officials and citizens on the territory of Ukraine, and in the cases foreseen by international treaties – outside the country.

The order of the compulsory execution of the decisions of the courts and other institutions (officials) determines the Law of Ukraine "On the Enforcement Proceedings".

The State executive service is responsible for the compulsory execution of court decisions in Ukraine, and is a part of the Ministry of Justice of Ukraine.

In compliance with the Law of Ukraine "On the State Executive Service" the compulsory execution of court decisions is fulfilled by the state executors of the Department on the State Executive Service of the Ministry of Justice of Ukraine, sections of the State Executive Service in the territorial departments of justice (in the oblasts).

According to the Decree of the Cabinet of Ministers of Ukraine from the 10th of June, 2006, № 952 "On Execution in Ukraine of the Convention on the Civil Aspects of International Child Abduction" when the court grants a return of the child to a foreign country the Ministry of Justice of Ukraine assists to the applicant during the compulsory execution of the court decision on return of the child.

According to Article 367 of the Civil Procedural Code of Ukraine the court allows immediate execution of the decisions in the cases concerning the child's returns to a person he/she lives with.

The State Executive Service on the basis of the executive document opens the executive proceeding.

In the court decision may be mentioned that the debtor should act in same way, namely to return the child to the country of habitual residence. In such case the compulsory execution of the decision will be held in accordance with the Article 76 of the Law "On the Enforcement Proceedings".

After opening the executive proceeding the state executor determines the terms for voluntary execution of the court decision. The state executor imposes fine or other penalties foreseen by the Law on a debtor in case of nonfulfillment without grounded reasons and determines the new term for execution.

The state executor imposes the double fine on the debtor in case of second nonfulfillment without grounded reasons. In case when the debtor continues non-execution of the court decision, the state executor shall apply to the court about institution criminal proceedings against such debtor.

In case the execution of the court decision could be fulfilled without presence of the debtor, the state executor organizes such proceeding according to his power and imposes the fine on debtor.

In the court decision on return may be prescribed that the child should be forwarded to the applicant. In this case the State Executive Service enforces the court decision in accordance with Article 78 of the Law "On the Enforcement Proceedings".

The presence of the person to whom the child is to be returned according to the decision and the representative of the Office on children's issues are obligatory during execution of the court decision on taking the child from the person.

In this regard the Central Authority of Ukraine recommends to the applicants to specify in the application on return of a child the proposals for the execution of the decision.

In case when the debtor avoids the execution of the court decision the necessary measures must be taken.

Furthermore, when it is necessary, the state executor may apply to the court with the application to resolve the issue about temporary location of the child to the child's protection or health institution. Such decision must be taken by the court.

In case of absence of the child at the place of residence during the execution the state executor may apply to the court with application to search the child.

According to the procedural legislation of Ukraine the compulsory execution of the return decision may be suspended by the court ruling in case of appeal or cassation.

(b) a contact/access order?

The access order may be compulsory executed if it has the requirements for the debtor to make certain actions or to refrain from the actions. In this case the procedure of execution of the access order will be held in accordance to Article 76 of the Law "On Enforcement Proceedings". (See answer V (a)).

The person, who nonfulfill the court decision on access to the child may be obliged to compensate the moral and financial damages to the person, who lives separately from the child, according to Article 159 of the Family Code of Ukraine.

VI Substantive law

(a) What are the legal criteria by which custody and contact determinations are made?

In Ukraine family relations are regulated in order prescribed by the Family Code of Ukraine.

According to Article 153 of the Family Code of Ukraine the mother, the father and the child have the right on unimpeded contact, except, when this right is limited by the law.

In accordance with the Article 157 of the Family Code of Ukraine the issues concerning upbringing of the child shall be solved by parents in common.

The parent who lives separately from the child, should take part in his/her upbringing and has the right on personal communication with him/her.

The parent with whom the child lives doesn't have the right to hinder the parent who lives separately from communication with the child and taking part in his/her upbringing if such communication doesn't obstruct the normal development of the child.

In accordance with Article 159 of the Family Code of Ukraine if the parent with whom the child lives obstructs the parent who lives separately in communication with a child and his/her upbringing, in particular if he/she avoids to comply with the authority on tutorship and curatorship decision, the other parent has the right to apply to the court with a claim on elimination of these impediments.

The court determines the ways of participation of one of the parents in upbringing of the child (periodical or systematical appointments, possibility of common rest, visit of place of his/her residence by the child etc.), place and time of their contact.

In certain cases if it is in the best interests of the child, the court can determine appointments with the child by the presence of other person.

During the settlement of the dispute on the participation of one of the parent in the upbringing of the child the judge takes into account the parents' attitude to fulfillment of their responsibilities, personal commitment of the child to each of them, age of the child, health and other circumstances that have significant value, including state of mental health of the parent, abuse of alcoholic drinks or drugs.

Article 160 of the Family Code determines that the child's place of residence who is under the age of ten shall be determined by the consent of his (her) parents. The child's place of residence who is ten years or older shall be determined by the mutual consent of his (her) parents and by a consent of the child. If parents live separately, the child's place of residence who is fourteen years or older shall be determined by the child himself (herself).

When resolving the dispute of a minor child's place of residence, the attitude of parents towards fulfillment of their parental duties, the child's personal affection to each of them, the age of the child, condition of his (her) health and other circumstances are of vital importance shall be taken into account.

If the child cannot be transferred to any of these persons, the court, on the request of a Guardianship and Tutelage Body may decide to take the child away from the person with whom he (she) lives and place him (her) under guardianship to the Guardianship and Tutelage Body.

According to Article 162 of the Family Code if one of the parents or any other person willfully, without consent of another parent or other persons, with whom the minor child lived according to the law or by the court decision, change the place of his (her) residence, also by means of abduction, a court, upon application of the interested person, has the right to deliver immediately the decision on depriving the child and his (her) return to the last place of residence.

The child cannot be returned only in a case when his (her) staying at the previous place of residence creates the real danger for his (her) life.

(b) Is there a difference in the legal status of mothers and fathers in custody or contact cases?

No, there is no difference.

Article 51 of the Constitution of Ukraine establishes that the each spouses have equal rights and obligations in the marriage and family.

In accordance with Article 157 of the Family Code of Ukraine the issues concerning upbringing of the child shall be solved by parents in common.

VII Social services and child protection services

Please describe the services which exist for the assessment, care and protection of children in the context of international child abduction.

According to the Law of Ukraine "On Protection of Childhood" the authorities on tutorship and curatorship operate with issues concerning orphans and children, who are deprived of parental care.

Direct guiding and coordination of activities concerning orphans and children, who are deprived of parental care, rely on Offices on children's issues.

Paragraph 14 of the Decree establishes that the authority on tutorship and curatorship should:

1) to take measures to get a consent for voluntary return of a child by an abducted person and to inform such person about the provisions of the Convention;

2) to compose and present to the territorial department of justice (in oblast) a conclusion about the child's living conditions in Ukraine and information about the child's attitude to the return to the country of habitual residence;

3) to take measures to protect a child or concerned persons from any damages, including temporary locating of a child in accordance with a court decision (ruling) to the institution of the social or health protection;

4) to provide, if necessary, to the child the assistance of a teacher, psychologist or any other specialist;

5) to inform the territorial department of justice (in the oblast) about the refusal of abductor to return a child to the state of habitual residence voluntary.

The presence of the representative of authority on tutorship and curatorship before the court is necessary in the cases against a child or concerning the rights of the child in accordance with the Law of Ukraine «On ensuring of organizational and legal conditions for social protection of orphans and children, who are deprived of parental care».

Please indicate the services available for the protection (if necessary) of returning children, as well as the services available (including legal advice and representation) to a parent accompanying the child on return.

According to the Decree of the Cabinet of Ministers of Ukraine from the 10th of June 2006 № 952 "On Execution in Ukraine of the Convention on the Civil Aspects of International Child Abduction" the local authority on tutorship and curatorship where the child lives if necessary takes measures to protect a child or concerned persons from any damages, including temporary locating of a child in accordance with a court decision (ruling) to the institution of the social or health protection and provides, if necessary, to the child the assistance of a teacher, psychologist or any other specialist.

Moreover by special provisions of the Decree, the Ministry of Justice entrusted:

- to take measures to guarantee the rights of an applicant to communicate with the child and also provides legal assistance and other consultations;
- to involve the special institution of social protection and health care or other competent authorities in the foreign country to take care about the child and guarantee the security of his/her rights after return.

The temporary locating of a child in accordance with a court decision (ruling) to the institution of the social or health protection may be provided during the compulsory execution of the court decision on return.

VIII Information and training

What measures are being taken to ensure that persons responsible for implementing the Convention (e.g. judges and Central Authority personnel) have received appropriate information and training? (Note: the Permanent Bureau may be contacted for information in relation to forms of assistance which may be available for this purpose.)

Ukraine takes part in the meetings of Special Commission of the Hague Conference to study the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

The individuals can obtain the information concerning the operation of the Abduction Convention on the official web site of the Ministry of Justice of Ukraine and in publications.

The Ministry of Justice of Ukraine organizes trainings for the experts from the local departments of justice (in the oblasts), representatives of the authorities, involved in the execution of the Convention, as well as for judges on operation of the 1980 Convention.

In particular, since 2008 the Ministry of Justice of Ukraine with the assistance of the UEPLAC and the German Foundation on International Legal Cooperation regularly organizes trainings involving foreign experts for the representatives of the Central Authority and territorial departments of justice (in the oblasts) who operates with the Abduction Convention and for the judges of local courts which are competent to consider the cases about return and access in accordance with the Abduction Convention.

The Ministry of Justice of Ukraine continues its work on organization of the trainings for the experts on operation of the 1980 Convention.