

**HAGUE CONVENTION OF 25 OCTOBER 1980
ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

Standard questionnaire for newly acceding States

response from: [ANDORRA]

I Implementing legislation

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

The Andorran Parliament approved on 2 February 2011 the Special Procedures Act (SPA) with regard to the 1980 Hague Convention on Child Abduction, the 1973 Hague Convention on Maintenance Obligation and the 1980 Council of Europe Convention on Custody of Children. With the Act into force, the Andorran Tribunals will be able to deal efficiently and without a delay with the issues of the three conventions. The Act completes the current judicial procedures and proposes a simplified and accelerated procedure for the recognition of the foreign decisions with regard to the sensitive issues related with the three conventions, allowing the Administrative and Judicial Institutions to act quickly and effectively.

(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.*)

The SPA (Act 2/2011, of 2 February, of the Special Procedures with regard to the Recognition and Enforcement of Decisions relating to Maintenance Obligations, of the Civils Aspects of Internacional Child Abduction and of the Custody of Children, in catalan: *Llei 2/2011, del 2 de febrer, dels procediments especials relatius al reconeixement i a l'execució de decisions en matèria de pensions compensatòries, dels efectes civils del segrest internacional de menors, i de la custòdia de menors*) came into force last 3 March 2011 and was published in the Official Gazette of the Principality of Andorra # 14, of 2 march 2011. A copy in the Catalan language has been attached to the present questionnaire and it can be consulted in the following web page. www.bopa.ad.

II Locating children

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

The Ministry of Interior, according to the Manual of Proceddings, which is currently under the process of being drafted, will call for the intervention of the Immigration Department and the Police for the location of the missing minor. In previous experiences, the size of the country has been decisive for the location of certain individuals.

III Central Authority

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

Ministry of Interior
Carretera de l'Obac s/n

AD700 Escaldes-Engordany
Principality of Andorra
Telephone: (37-6) 872-080
Fax: (37-6) 869-250

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

Contact person: Mrs. Adoració Garcia
Languages spoken: Catalan, Spanish and French
Telephone: (37-6) 872-000 (24 hours – Police Department)
Fax: (37-6) 869-250
E-mail: dory_garcia@govern.ad

(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:

A Special Commission, with specialists from the High Council of Justice, District Attorney's Office, Ministry of Interior, Ministry of Health and Welfare, Government's Legal Department and Ministry of Foreign Affairs, has been set up to conclude a Manual of Proceedings, which deals with all aspects related to the 1980 Convention. The guide includes specific measures to be taken into account based on an specific case and the functions of all the departments and institutions involved.

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?

First of all, the Andorran Central Authority will revise the application and decide which measures need to be implemented, and, according to article 5 of the SPA, if the need arises, a case will be lodged in the **Duty Tribunal** (one of the twelve (12) existing judges presides daily the Duty Tribunal based on a rotation scheme). Any application can be brought to the Court 24 hours a day, 7 days a week. Furthermore, and also because of the size, the Duty Tribunal has full territorial jurisdiction over the country.

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

The most important one is the SPA, which envisages a short procedure to quickly respond to return applications. In fact, this Act has based its provisions on the exceptional procedure of article 41.1 of the Andorran Constitution, which establishes an urgent and preferent course of action for the breach of rights and freedoms enshrined in the Andorran Magna Carta. Article 6.3 of the SPA also states that the procedure before the Court should not last more than 20 days, from the day the return application is lodged. Nevertheless, judges have the faculty to even shorten the process if they believe it is in the best interest of the child (article 5 of the SPA). In case of appeal, article 11 of the SPA orders the Higher Court to resolve the case in a maximum period of 10 days.

(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?

Foreign applicants can file the return application directly to the Andorran Tribunals with the assistance of a private lawyer, or they can contact the Central Authority of their countries of residence, which, consequently, will contact the Andorran Central Authority that will lodge, if the need arises and free of charge, the return application before the Andorran Courts with the aid of the lawyers assigned to the Legal Department of the Andorran Government (article 6 of the SPA). However, as a general rule, all expenses will be paid by the plaintiff unless he/she can prove the lack of economic means. In that

case, he/she will enjoy the benefit of legal aid. Finally, all charges can also be imposed on the defendant, if the judge so decides (article 12 of the SPA).

V Enforcement procedures

What procedures and measures exist for the enforcement of:

(a) a return order?

The judge's decision will include specific procedures and measures for the enforcement of the return order which may comprise the involvement of the Police, the Social Services or even the Ministry of Foreign Affairs, if there is a need to agree with the Central Authority of the requesting state about the conditions for the safe return of the minor and his/her abductor. The Manual of Proceedings has a specific chapter that deals with judgements and their content. In fact, judgements will contain usual enforcement provisions already included in other enforcement proceedings, since the additional disposition of the SPA establishes judges may apply *mutatis mutandis* the existing rules of civil procedures.

(b) a contact/access order?

The same answer as question (a) prevails for question (b).

VI Substantive law

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

The judge will have to decide based on the child's best interest. Judges should consider all possible solutions. One should also take into account that, often, the relation between the child and the applicant parent needs to be reestablished through a step-by-step process monitored by the Social Services of the requested country. There are no easy or general solutions and decisions will be taken on a case by case basis.

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

No, there is not, although in practice it seems mothers enjoy a greater protection of Courts and Social Services due to the increase of domestic violence cases and the principle of positive discrimination. However, every day more and more, judges are seriously favouring shared custodies with the aim to benefit both parents.

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:

The Ministry of Health and Social Welfare has a Child Attention Unit integrated into the Department of Attention and Social Intervention. This Special Unit encloses three different services: Child Protection Specialized Team (EEPI), Child Fostering Program and Adoption Service. Each team includes experts in different areas of expertise like social workers, social educators, child-youth psychologists and lawyers. Their functions are regulated by the Act on Adoption and Other Forms of Protection of Socially Unprotected Children, the Adoption Regulation, and the Protocol on children in danger (PACIP) which was approved by the Andorran Government on 10 June 2004 and deals with all needed actions to be implemented by the institutions involved in the direct intervention in cases of children in danger. The Protocol takes into account different phases of the implementation procedure as well as different areas of intervention. The Andorran Tribunals, the District Attorney's Office, the Courts' Tribunal (Court of Appeal for criminal matters), the Ministry of Justice and Interior, the Police Department, the Ministry of Education, Youth and Sports and the Ministry of Health and Welfare are the different institutions that participate in the implementation of the PACIP. There is also an Open Child Protection and Reception Center that has been specifically equipped to take in

children of all ages who have suffered from an abandonment situation. The Center provides for their proper biopsicosocial development and normal integration in their daily activities. The Manual of Proceeding will adapt the current Protocol to the more specific situation of the cases of the 1980 Convention.

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:

Child protection services had been described in the previous question and the Manual of Proceedings establishes concrete return measures. On the other hand, attorneys of the Government' Legal Department will provide for legal advice and representation to the parent accompanying the child although no other additional services had been foreseen *a priori*.

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.)

The government of Andorra participated, through a delegate from the Ministry of Foreign Affairs, in the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions that took place in The Hague from 1-10 June 2011. During the meeting, contacts were made already with the Secretariat of the Permanent Bureau and different delegations in order to possibly organize some training seminars in Andorra addressed to the judges and all the parties involved in the implementation of the 1980 Convention, as well as lawyers on a second stage.