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## 1. GENERAL BACKGROUND

Ireland is a sovereign Constitutional democracy operating a common law system. The main statutory law dealing with children is found in the Guardianship of Infants Act 1964<sup>1</sup> as amended by the Children Act 1997.<sup>2</sup> Jurisdiction, recognition and enforcement issues in Ireland, as in other EU States,<sup>3</sup> have been complicated by the Brussels II Regulation<sup>4</sup> which came into force on 1 March 2001 and has priority over domestic law.

### 1.1 IMPLEMENTATION OF THE CONVENTION

Ireland ratified the 1980 Hague Convention on the Civil Aspects of International Child Abduction on 1 October 1991 when the Child Abduction and Enforcement of Custody Orders Act 1991<sup>5</sup> (the 1991 Act) came into force. Ireland was the 21<sup>st</sup> Contracting State to the Convention. With the implementation of the 1991 Act Ireland also ratified the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children.<sup>6</sup> However where proceedings under both Conventions have been invoked, the 1991 Act ensures that the Hague Convention proceedings take precedence.<sup>7</sup>

### 1.2 OTHER CONTRACTING STATES ACCEPTED BY IRELAND

Ireland as a Member State of the Hague Conference ratified the Convention and as with all other States it must accept all other ratifications. Nevertheless, under Article 38, non-Member States may accede to the Convention and Contracting States are not obliged to accept accessions. In Ireland, acceptance of accessions is on the basis of a Government decision. The Department of Foreign Affairs makes the necessary arrangements. Ireland has accepted the vast majority of

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<sup>1</sup> 7/1964.

<sup>2</sup> 40/1997.

<sup>3</sup> With the exception of Denmark which is not a party to this Regulation.

<sup>4</sup> Council Regulation (EC) No. 1347/2000 of 28 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses OJ No. L160, 30.6.2000, p. 19.

<sup>5</sup> 6/1991.

<sup>6</sup> Also known as the Luxembourg Convention. For Contracting States, see Child Abduction and Enforcement of Custody Orders Act, 1991 (section 18) (Luxembourg Convention) Order, 2001. SI No. 472/2001.

<sup>7</sup> Child Abduction and Enforcement of Custody Orders Act 1991 s 28 (2).

acceding States, with only those who have acceded since July 2001, yet to be accepted. In total Ireland has accepted 35 acceding States. As at 1 January 2002, the last State to be accepted by Ireland was El Salvador accepted in November 2001.<sup>8</sup>

For a full list of all States for whom the Convention is in force with Ireland and the dates that the Convention entered into force for the relevant States, see the Appendix.

### **1.3 BILATERAL AGREEMENTS WITH NON-CONVENTION STATES**

Ireland has no bilateral agreements with non-Convention States. However EU Member States are exploring the possibility of arrangements with non-Convention States particularly in North Africa.

### **1.4 CONVENTION NOT APPLICABLE TO INTERNAL ABDUCTIONS**

Abductions within Ireland are dealt with under the Guardianship of Infants Act 1964 where the dispute is between two guardians. Under this Act the welfare test is paramount.<sup>9</sup> The criminal law may also be invoked where a child is abducted by a non-guardian, (which could include a father who is not married to the child's mother and who has not become a guardian either by agreement with the mother<sup>10</sup> or by order of the court<sup>11</sup>).<sup>12</sup> On summary conviction a person is liable to a fine or to imprisonment for a term not exceeding 12 months or both.<sup>13</sup> On indictment, a person is liable to a fine or to imprisonment not exceeding seven years or both.<sup>14</sup>

## **2. THE ADMINISTRATIVE AND JUDICIAL BODIES DESIGNATED UNDER THE CONVENTION**

### **2.1 CENTRAL AUTHORITY**

The functions of the Central Authority are carried out by staff of the Department of Justice, Equality and Law Reform under the management of the Civil Law Reform Division of that Department. There are two heads of staff at executive level and two clerical support staff. The Central Authority is also overseen by a Principal Officer and an assistant Principal Officer. In addition to dealing with applications under the Hague Convention, the Central Authority also processes

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<sup>8</sup> The latest Statutory Instrument detailing States with whom the Convention is in force with Ireland is the Child Abduction and Enforcement of Custody Orders Act, 1991 (Section 4) (Hague Convention) Order, 2001 SI No. 507/2001.

<sup>9</sup> See Guardianship of Infants Act 1964 s 3.

<sup>10</sup> Guardianship of Infants Act 1964 s 2 (4), as inserted by s 4 of the Children Act 1997.

<sup>11</sup> Guardianship of Infants Act 1964 s 6 A, as inserted by s 12 of the Status of Children Act 1987 (26/1987).

<sup>12</sup> The Non-Fatal Offences Against the Person Act 1997 s 17 (26/1997).

<sup>13</sup> See s 17 (3) (a).

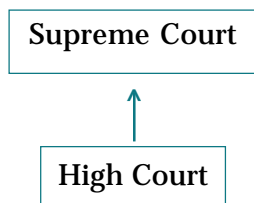
<sup>14</sup> See s 17 (3) (b).

applications under the European Custody Convention<sup>15</sup> and the New York Maintenance Convention.<sup>16</sup> It is estimated that less than 40% of the Central Authority's time is taken up in dealing with Hague Convention applications. The officers in the Central Authority are civil servants and no lawyers are employed directly as members of their staff. However, the Central Authority can seek legal advice from the Attorney General as the legal advisor to the Government of Ireland. In practice, there is rarely a need to seek such advice.

Central Authority staff, both clerical and executive, receive training on the job. In addition to English, the staff between them have an understanding of French, German, Italian and Spanish. The Central Authority can be located at the following address:

Department of Justice, Equality and Law Reform  
43 / 49 Mespil Road  
DUBLIN 4  
Ireland  
Tel: +353 1 667 0344  
Fax: +353 1 667 0367  
Email: *child\_abduction@justice.ie*

## 2.2 COURTS AND JUDGES EMPOWERED TO HEAR CONVENTION CASES



There are four tiers in the Irish civil court system. The bottom tier consists of District Courts at which a statutory maximum of 53<sup>17</sup> judges are able to sit. Above District Courts are Circuit Courts where a statutory maximum of 31 judges are able to sit. The third tier in the Court system consists of the High Court with final appeal being to the Supreme Court. While all tiers have jurisdiction in guardianship matters, the 1991 Act, which implements the Convention, confers exclusive jurisdiction in Convention cases on the High Court with an appeal to the Supreme Court. There is a statutory maximum of 28 judges who are empowered to hear cases in the High Court and this court usually sits in Dublin. However, in practice only a limited number of judges deal with Convention cases on a regular basis. There is a statutory maximum of 8 judges able to sit in the Supreme Court. High Court and Supreme Court judges are appointed by the Irish President on the advice of the government and must have at least 12 years experience as a practising barrister or solicitor.

<sup>15</sup> Also known as the Luxembourg Convention.

<sup>16</sup> Viz the 1956 UN Convention on the Recovery Abroad of Maintenance, usually referred to as the 'New York Convention'.

<sup>17</sup> This figure and others in this paragraph are taken from the Courts and Court Officers Act 2002.

### 3. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR RETURN

#### 3.1 LOCATING THE CHILD

In all cases, the Central Authority will verify the child's location through the use of the National Police (*An Garda Síochána*), who are generally both prompt and discreet in confirming the location of the child. Where the applicant is unable to provide a contact address or information regarding the whereabouts of the child, investigations are undertaken by *An Garda Síochána*. The Child Care Act 1991<sup>18</sup> gives *An Garda Síochána* powers to enter and search property when appropriate.<sup>19</sup> On rare occasions, and only at the court's direction, media publicity may be used to help locate a child. Cases are reviewed as a matter of course by the Central Authority and the other agencies involved.

#### 3.2 CENTRAL AUTHORITY PROCEDURE

On receiving an application, the Central Authority examines it to ensure that it comes within the scope of the Convention. The Central Authority provides its own standard application form. Ireland made no reservation to Article 24 of the Convention but in practice most applications are made in English. Indeed, in 1999, all but three return applications received by Ireland were from English speaking countries.<sup>20</sup> Where translation of relevant documents is required this will be arranged by the Central Authority at no charge to the applicant. The police (*Gardaí*) may become involved where the location of the child is an issue and the local Health Board may become involved in cases where measures need to be put in place to prevent harm to the child.<sup>21</sup> Where this is the case, these bodies will be involved in attempting to secure the voluntary return of the child or bringing an amicable resolution of the issues. Family law in Ireland expressly encourages,<sup>22</sup> and the courts support, voluntary agreements or mediation between the parties. Experience in child abduction cases is that approaches to seeking voluntary resolutions do not delay matters.<sup>23</sup> Where delay does occur, the Central Authority will review the case. When the case is passed to the Legal Aid Board in order for an application to be made to the courts seeking the return of the child, this body is also aware of the Convention obligation to attempt to secure the voluntary return of the child.<sup>24</sup> Indeed, in 1999 18% of applications to Ireland resulted in a voluntary return, which is identical to the global average proportion of applications resulting in voluntary returns.<sup>25</sup>

<sup>18</sup> 17/1991.

<sup>19</sup> See Child Care Act 1991 s 12.

<sup>20</sup> Preliminary Document No. 3 *A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, drawn up by Professor Nigel Lowe, Sarah Armstrong and Anest Mathias and available at <http://www.hcch.net/e/Conventions/reports28e.html> (Hereafter 'Preliminary Document No. 3'). However, the access application came from Hungary.

<sup>21</sup> For further information see post at 5.3.

<sup>22</sup> See Children Act 1997 s 11 amending the Guardianship of Infants Act 1964.

<sup>23</sup> See Ireland's response to the questionnaire concerning the practical operation of the Convention and views on possible recommendations, sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission. (Hereafter 'Ireland's Response to Hague Questionnaire').

<sup>24</sup> See Article 7 (c) and Article 10 of the Convention.

<sup>25</sup> Preliminary Document No. 3, op. cit., n. 20.

The Irish Central Authority will liaise with the foreign Central Authority to provide status reports on the case and to obtain further information or documentation where needed. The Central Authority will also monitor the progress of the case in Ireland.

### **3.3 LEGAL REPRESENTATION**

The Central Authority in Ireland passes applications to the Legal Aid Board who represent the applicant. Usually a solicitor is appointed within 24 hours. Indeed if an application is received in the morning a solicitor may well be appointed by the afternoon. The Board arranges for a barrister to take the case to the High Court. It is possible that the Board will also represent the abductor and in such cases, separate law centres will represent the applicant and the abductor, in order to avoid a conflict of interests.

### **3.4 COSTS AND LEGAL AID**

Ireland did not make a reservation to Article 26 of the Convention and consequently legal aid is provided to all applicants in Convention proceedings regardless of means.<sup>26</sup> On receipt of an application, the Central Authority will automatically contact the Legal Aid Board. This Board was established in 1980 on an administrative basis but was placed on a statutory footing by the Civil Legal Aid Act 1995. Under section 28 (5) of this Act, legal aid is automatically available to all applicants in return proceedings under the Convention regardless of means.<sup>27</sup>

Respondents in Convention cases are not entitled to automatic legal aid, but can apply under the Civil Legal Aid Act 1995 which provides for a means and merits test.

### **3.5 LEGAL PROCEEDINGS**

The importance of speed in Convention proceedings is highlighted by the fact that initial ex parte applications can be made at any time. Interim orders can also be made, where necessary, on an ex parte basis.<sup>28</sup> In case of extreme emergency they can even be made to a High Court judge in his or her home.<sup>29</sup> The listing of the substantive hearing will then depend on a number of factors including the availability of court time and the speed at which the parties can exchange affidavit evidence. The court will attempt to give priority to Convention cases.<sup>30</sup> Section 38 (2) of the 1991 implementing Act provides that Rules of Court may be made for expeditious hearings of applications under the Hague and European Conventions. Such Rules were in fact made in 2001.<sup>31</sup> Under these Rules provi-

<sup>26</sup> See Civil Legal Aid Act 1995 s 28 (5), (32/1995).

<sup>27</sup> See section as amended by s 13 of the Children Act 1997.

<sup>28</sup> See Child Abduction and Enforcement of Custody Orders Act 1991 s 12 (1) and 12 (2).

<sup>29</sup> National Report for Ireland – Common Law Judicial Conference on International Parental Child Abduction, Washington, DC, September 2000. (Hereafter 'National Report for Ireland').

<sup>30</sup> Ibid.

<sup>31</sup> Rules of the Superior Courts (No. 1) (Child Abduction and Enforcement of Custody Orders Act, 1991), 2001 SIno. 94/2001.

sion is made for the “expeditious hearing of the matter”<sup>32</sup> and for applications to be heard “on the basis of affidavit evidence only”. However in “exceptional circumstances”, the court may “direct or permit oral evidence to be adduced”.<sup>33</sup> Significantly, a stay on any other proceedings pending before the courts can be obtained.<sup>34</sup>

Affidavit evidence is governed by Order 40 Rule 4 of the Rules of the Superior Courts which states that:

“Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted”.

In Convention cases, statements of belief, as described above, are permitted due to the fact that initial application is by way of an interlocutory motion and is made *ex parte*. Oral evidence is discouraged and is usually only permitted where there is an unresolvable disagreement between the affidavit evidence on a crucial point of importance.

Where exceptions to return under Article 13 are raised, these must be fully set out in the respondent’s affidavit evidence. Other supporting affidavit evidence may also be filed in support of these claims. There is specific statutory provision in the Children Act 1997 regarding hearing indirect evidence from children and taking evidence for reports on a child’s welfare.<sup>35</sup> Another Irish Statute which may interface with an abduction, removal or retention situation is the Family Law Act 1995.<sup>36</sup>

### 3.6 APPEALS

Appeals from the High Court lie to the Supreme Court. An appeal hearing will be based on the affidavit evidence provided at the original hearing including a transcript of any oral evidence. Additional evidence, for example, that which was not available at the time of the original hearing may occasionally be permitted. Such evidence would be permissible by way of affidavit evidence. However, the use of further evidence is extremely rare.

The onus is on the appellant to bring the appeal with all reasonable dispatch. Arrangements are generally made for special priority to be given. According to the Irish response to the Hague Questionnaire sent out prior to the Fourth Special Commission in March 2001, in one case, an appeal was heard within one week of the first application for listing being made to the court.

### 3.7 ENFORCEMENT OF ORDERS

Where the Irish court orders that the child must remain in the jurisdiction, for example pending the hearing, an order may be directed to the airport or port officials and other necessary parties to prevent the child’s removal from Ireland. Orders are generally enforced through contempt of court proceedings. The main enforcement agency in Ireland is *An Garda Síochána*. To date, the Irish Central

<sup>32</sup> SI No 94/2001, r 5 (1).

<sup>33</sup> SI No 94/2001, r 5 (2).

<sup>34</sup> See Child Abduction and Enforcement of Custody Orders Act 1991 s 13.

<sup>35</sup> See Part IV of the Guardianship of Infants Act 1964, as inserted by s 11 of the Children Act 1997. This part of the 1997 Act is not yet fully in force.

<sup>36</sup> See in particular, the Family Law Act 1995 s 47, (26/1995), which provides for the procurement of social reports.

Authority is not aware of any case where the necessity has arisen for anyone to be committed to prison for contempt in Convention proceedings.

The Irish courts have a wide discretion to either order immediate execution of an order, or to defer execution. They may also make interim orders where they consider it appropriate. Both High Court and Supreme Court orders are enforced in the same way. In dealing with penalties for non-compliance, judges in both courts have a wide discretion.

## **4. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR ACCESS**

### **4.1 CENTRAL AUTHORITY PROCEDURE**

The Central Authority in Ireland takes the view that access applications under the Convention can often best be pursued by way of domestic law. Therefore, when the Central Authority receives an access application, it will advise the applicant of options under domestic law. Where appropriate it will also suggest that the applicant consider pursuing an application under the European Convention.<sup>37</sup> In practice Ireland receives relatively few access applications under the Hague Convention, with only one such application received in 1999.<sup>38</sup> Additionally, however, there were 10 applications for the recognition and enforcement of access orders received by Ireland under the European Convention in that year.

### **4.2 LEGAL PROCEEDINGS**

As applications for access are dealt with under domestic legislation, normal rules of court apply. These allow for expedition of proceedings in suitable cases. Section 3 of the Guardianship of Infants Act 1964, states that the welfare of the infant is the first and paramount consideration. Amendments made to this legislation by section 9 of the Children Act 1997<sup>39</sup> ensure that in considering whether to make orders, the court has regard to whether the best interests of the child are served by maintaining personal relations and direct contact with both parents on a regular basis.<sup>40</sup>

### **4.3 ENFORCEMENT OF ORDERS**

The courts have a wide discretion to help to guarantee access. Where it is thought that there is a danger of abduction, the courts frequently order passports to be surrendered. Failure to comply with an order of the Circuit or High Court may place the respondent in contempt of court. Where the order is made at District Court level, sanctions are available including fines and imprisonment, under section 5 of the Courts (No. 2) Act 1986,<sup>41</sup> as amended by section 14 of the Children Act 1997.

<sup>37</sup> See post at 4.4. There were 10 applications received under the European Convention in 1999 although it is not clear how many of these involved access.

<sup>38</sup> See Preliminary Document No. 3, op. cit., n. 20.

<sup>39</sup> Inserting s 11 D into the Guardianship of Infants Act 1964.

<sup>40</sup> See s 11D of the Guardianship of Infants Act 1964.

<sup>41</sup> 26/1986.

#### **4.4 COSTS AND LEGAL AID**

Unlike in return applications, legal aid is not automatically available for applicants in access applications. Applications are made under domestic legislation, the Guardianship of Infants Act 1964 (as amended by the Children Act 1997) and applicants will only qualify for legal aid where they meet the requirements of the Civil Legal Aid Act 1995. In such cases, the Central Authority will direct the applicant to the Legal Aid Board. Alternatively, where appropriate, the Central Authority will suggest that the applicant pursue an application under the European Convention as legal aid is available automatically for proceedings arising under this Convention.

### **5. OPERATING THE CONVENTION – OUTGOING APPLICATIONS**

#### **5.1 PREVENTING THE REMOVAL OF THE CHILD FROM THE JURISDICTION**

##### **5.1.1 CIVIL LAW**

Where a person fears that their child may be abducted from Ireland they can apply to the court to seek an injunction restraining removal. The court can also require passport authorities not to issue a passport to a child who does not possess one, or to require that a child's passport be handed in. As it is possible to place a child on a parent's passport the effectiveness of this measure is limited. There are few emergency measures which can be invoked where a sudden attempt is made to abduct a child. It may be possible to put out a port alert, but such measures are not publicised.

##### **5.1.2 CRIMINAL LAW**

Since the implementation of the 1997 Non-Fatal Offences Against the Person Act, parental child abduction has been a criminal offence. Under section 16 it is a criminal offence for a guardian (including a parent who is a guardian) to take a child out of Ireland without the consent of any other guardian. This is an arrestable offence and carries a maximum sentence of seven years imprisonment. As an arrestable offence, the *Gardaí* are also entitled to arrest on suspicion of an attempted abduction. This legislation is relatively new but it is felt that its existence has a preventative effect.

#### **5.2 CENTRAL AUTHORITY PROCEDURE**

With regard to outgoing applications from Ireland, the Central Authority will assist applicants in completing the relevant application forms. They will then examine the forms to ensure that the information comes within the scope of the Convention. After this application stage is complete, the Central Authority will arrange for translation of relevant documents, where appropriate, and will then submit the application to the foreign Central Authority. The Irish Central Authority will also monitor the progress of the case and keep the applicant informed. The case will not be closed until the proceedings are concluded or it is known that the child has returned.



### **5.3 PROTECTION AND ASSISTANCE ON RETURN**

Issues as to custody of or access to the child on return which remain outstanding between the parties can be determined by either party applying to court under section 11 of the Guardianship of Infants Act 1964. In addition, if there is any question as to the adequacy of the care and protection available to the returned child, the local Health Board will have a role. The Child Care Act 1991<sup>42</sup> provides that regional Health Boards have responsibility for the care, safety, welfare and protection of children in their functional areas who are not receiving adequate care and protection.<sup>43</sup> Children who are in such a situation can be dealt with under such legislation.<sup>44</sup> This can include Supervision Orders<sup>45</sup> where appropriate. If necessary, the Central Authority will bring any matters to the attention of the relevant Health Board. The Health Boards will also be involved where there are allegations of violence against a parent and / or a child.

The Central Authority will provide or arrange for support, advice and information as appropriate and necessary. They will also arrange for undertakings from foreign courts to be respected as far as is possible. Such undertakings will be respected by the Irish courts but are not binding upon them. Information on legal and financial protection for a child returned under the Convention and an accompanying parent can be obtained from the Legal Aid Board solicitor or the relevant Health Board. Health Boards also facilitate contact with bodies able to provide resources and necessary care for the child pending custody proceedings in Ireland.

### **5.4 COSTS AND LEGAL AID**

The Irish Central Authority can arrange for applications to be translated into the language of the requested State, free of charge to the applicant.

## **6. AWARENESS OF THE CONVENTION**

### **6.1 EDUCATION OF THE CENTRAL AUTHORITIES, THE JUDICIARY AND PRACTITIONERS**

In practice there are relatively few judges involved in hearing Convention applications. Only a limited number of the 28 High Court judges hear cases and all 8 of the Supreme Court judges have Convention experience. Three judges normally hear appeals but there can be a court of five. As there are a limited number of judges who hear cases, the Judicial Studies Institute, which carries out education of judges in Ireland, does not have frequent conferences on child abduction. However such conferences are held from time to time.<sup>46</sup>

<sup>42</sup> The Child Care Act 1991 is to be amended by the Children Act 2001 (24/2001). A commencement order has not yet been issued in respect of s 16 of the 2001 Act, which will insert new Parts IV A and IV B into the Child Care Act 1991.

<sup>43</sup> See Child Care Act 1991 s 3 (1).

<sup>44</sup> See Child Care Act 1991 s 12 and 13.

<sup>45</sup> See Child Care Act 1991 s 19.

<sup>46</sup> See National Report for Ireland, op. cit., n. 29.

Irish judges have been involved in a number of international conferences including the Common Law Judicial Conference held in Washington, DC, in September 2000 and judges were included in the delegation attending the Fourth Special Commission of the Convention.<sup>47</sup> Ireland has also stated in its response to the questionnaire sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission that it favours the holding of judicial conferences.<sup>48</sup> Additionally, Ireland commented that the appointment of a liaison judge is under active consideration.<sup>49</sup> At the time of writing this remains the position. Irish judges have collaborated with foreign judges in particular cases.<sup>50</sup>

Practitioners in Ireland undergo regular training concerning the Convention. Both the Law Society of Ireland<sup>51</sup> and the Family Lawyers Association<sup>52</sup> hold relatively frequent conferences and seminars on child abduction.<sup>53</sup> Generally, both parties in Convention applications are represented by solicitors acting for the Legal Aid Board. Legal Aid Board solicitors spend a large proportion of their time working in the area of family law and consequently, there is a great deal of expertise amongst these solicitors. There are also a number of barristers who specialise in Convention cases.<sup>54</sup> Convention cases are also reported and many such cases are available on the International Child Abduction Database (INCADAT).<sup>55</sup>

## 6.2 INFORMATION AND SUPPORT PROVIDED TO THE GENERAL PUBLIC

The Irish Central Authority maintains some web pages on the Irish Government web site.<sup>56</sup> There is statistical information<sup>57</sup> on cases under the Hague and European Conventions and information on the scope of the Conventions and the role of the Central Authority. Relevant legislation is also available<sup>58</sup> including the 1991 implementing Act<sup>59</sup> and Statutory Instruments<sup>60</sup> detailing the Countries with which the Convention is in force up until 1998. The Central Authority is also in the process of producing a booklet which should be available by the end of 2002. Additionally a more expanded presence on the Internet is under consideration.

There is also a non-Governmental organisation, the Irish Centre for Parentally Abducted Children (ICPAC), which works in this area. This organisation can be contacted at the following address:

<sup>47</sup> Indeed part of the Commission was chaired by Mrs Justice Catherine McGuinness.

<sup>48</sup> Ireland's Response to Hague Questionnaire, op. cit., n. 23.

<sup>49</sup> Ibid.

<sup>50</sup> See *ibid.*

<sup>51</sup> The Solicitor's professional body. <http://www.lawsociety.ie>

<sup>52</sup> Consisting of both solicitors and barristers.

<sup>53</sup> See National Report for Ireland, op. cit., n. 29.

<sup>54</sup> See *ibid.*

<sup>55</sup> See <http://www.incadat.com> Cases are also available on the web site of the Law Faculty, University College Cork <http://www.irlii.org>

<sup>56</sup> <http://www.irlgov.ie/>

<sup>57</sup> The most recent year available is 1999 see <http://www.justice.ie/80256996005F3617/vWeb/wpJWOD4TFKVZ>

<sup>58</sup> <http://www.irl.gov.ie/ag>

<sup>59</sup> <http://193.120.124.98/ZZA6Y1991.html>

<sup>60</sup> <http://193.120.124.98/ZZSI238Y1998.html>

ICPAC – Irish Centre for Parentally Abducted Children  
 St. Annes Parish Centre  
 Molesworth Place  
 Dublin 2  
 IRELAND  
 Tel: +353 1 6620667  
 Fax: +353 1 6625132

## 7. THE CONVENTION IN PRACTICE – A STATISTICAL ANALYSIS OF APPLICATIONS IN 1999<sup>61</sup>

The Central Authority in Ireland handled a total of 60 new applications in 1999. Ireland was the 11<sup>th</sup> busiest Convention jurisdiction in that year in terms of the number of applications handled by the Central Authority.<sup>62</sup>

Incoming return applications	38
Outgoing return applications	21
Incoming access applications	1
Outgoing access applications	0
<b>Total number of applications</b>	<b>60</b>

### 7.1 INCOMING APPLICATIONS FOR RETURN

#### 7.1.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
UK-England and Wales	23	61
USA	7	18
Canada	2	5
Australia	1	3
Italy	1	3
Netherlands	1	3
UK-Scotland	1	3
UK-Northern Ireland	1	3
Slovenia	1	3
<b>Total</b>	<b>38</b>	<b>~100</b>

It is immediately evident in looking at the chart above, that the majority of the applications, 61%, were received from England and Wales. A further two applications were received from other jurisdictions in the UK making a total of 66%. Additionally, North American States made 24% of the applications received by Ireland in 1999.

<sup>61</sup> See Preliminary Document No. 3, op. cit., n. 20.

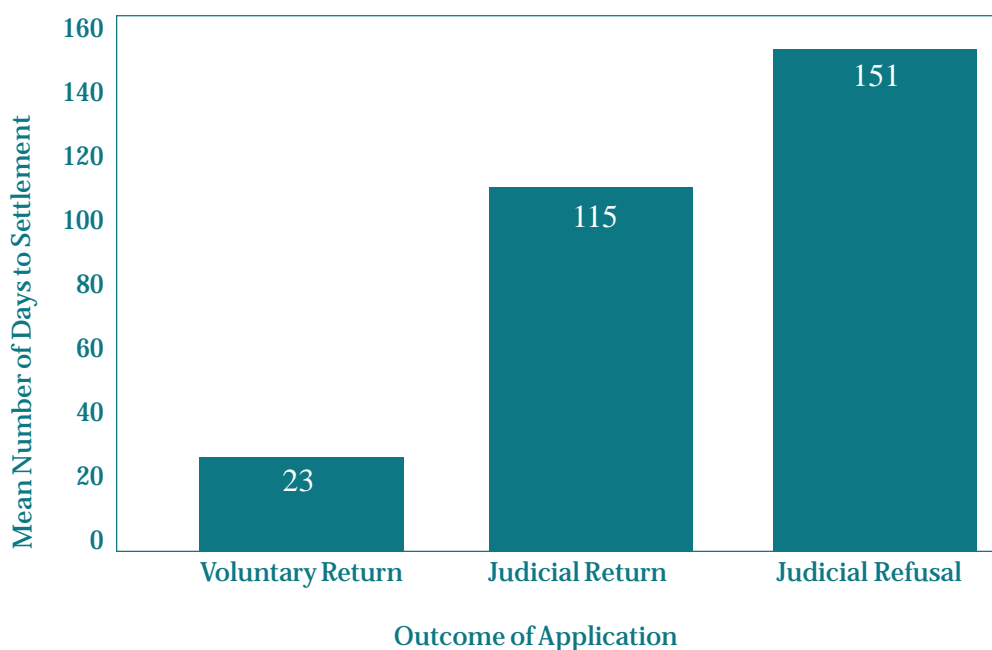
<sup>62</sup> The USA, England and Wales, Germany, Australia, France, Italy, Canada, New Zealand, Spain and Mexico all received more applications in 1999.

## 7.1.2 THE OUTCOMES OF THE APPLICATIONS

Outcome of Application		
	Number	Percent
Rejection	1	3
Voluntary Return	7	18
Judicial Return	16	42
Judicial Refusal	4	11
Withdrawn	9	24
Pending	0	0
Other	1	3
<b>Total</b>	<b>38</b>	<b>~100</b>

A high proportion of applications, 42%, resulted in a judicial return. Combining judicial and voluntary returns the overall return rate was 61%, which is higher than the global rate of 50%. Of the 20 applications which went to court, 16, 80%, resulted in a return order, which is higher than the global average of 74%. There was also a high proportion of applications which were withdrawn, 24% compared with a global average of 14%. The refusal rate at 11% was identical to the global rate, while there was only one rejection. No applications were still pending at 30 June 2001 which was our cut-off date for assessing applications. This compares favourably with other Contracting States analysed.

## 7.1.3 THE TIME BETWEEN APPLICATION AND FINAL OUTCOME



The graph above shows the mean number of days from application to settlement for each of the three stated outcomes. The mean average speed of voluntary returns at 23 days is much quicker than the global average of 84 days. The time taken to reach judicial decisions both for return and for refusal to return was similar to the global averages of 107 days and 147 days respectively. Overall, it appears that the system in Ireland operates relatively quickly and it may be noted that no applications made in 1999 were still pending at 30 June 2001 when these figures were collected.

The table below shows the minimum and maximum number of days taken in each of the stated outcomes. It also shows the median average in addition to the mean average shown pictorially in the prior table.

<b>Number of Days Taken to Reach Final Outcome</b>			
	<b>Outcome of Application</b>		
	<b>Voluntary Return</b>	<b>Judicial Return</b>	<b>Judicial Refusal</b>
Mean	23	115	151
Median	22	102	141
Minimum	1	15	81
Maximum	47	343	239
<b>Number of Cases</b>	<b>4</b>	<b>16</b>	<b>4</b>

## 7.2 INCOMING APPLICATIONS FOR ACCESS

Ireland only received one access application in 1999. This application came from Hungary and it was duly forwarded to the Legal Aid Board to be handled under domestic legislation. No further information was available on this case. The small number of access applications compared with return, is perhaps surprising, especially considering that globally, the proportion of access to return applications in 1999 was 17%.

## 8. CONCLUSIONS

Ireland has implemented and operates the Convention effectively. The Central Authority performs a limited administrative function and organises translations of any necessary documentation free of charge to the applicant in both incoming and outgoing cases. Ireland has not made a reservation to Article 24 and several languages are at least understood by Central Authority personnel. However, the vast majority of cases, 92% in 1999, are from English speaking nations.

At present the Central Authority does not have a booklet or a web site detailing information. However, there is a booklet due for publication by the end of 2002 and the Central Authority is looking into constructing a web site which would contain information such as the standard application form. Relevant legislation<sup>63</sup> and information relating to statistics is however available via the Irish Government's web site.<sup>64</sup>

The Irish Central Authority makes use of relevant agencies to assist in abduction cases. *An Garda Síochána* (the National Police) verify the location of the child in all cases and where the child's location is not known, they perform an investigative role. The local Health Boards are also called upon to assist when appropriate. Ireland has introduced legislation which criminalises parental child abduction<sup>65</sup> and it is thought that such legislation will have a preventative effect.

<sup>63</sup> <http://www.irlgov.ie/ag>

<sup>64</sup> <http://www.irlgov.ie>

<sup>65</sup> The Non-Fatal Offences Against the Person Act 1997.

Procedures in Ireland for operating the Convention are efficient. The Central Authority passes all applications to the Legal Aid Board solicitors, usually within a maximum of 24 hours. Ireland made no reservation to Article 26 of the Convention and therefore provides free legal representation to all applicants in return applications. Respondents may also be provided with a legally aided solicitor on a means and merits test. The Legal Aid Board is also aware of the Convention obligation to seek voluntary resolutions and the Irish domestic policy in family proceedings of seeking alternative solutions to court proceedings. Statistics<sup>66</sup> from the last few years, also bear out the fact that voluntary resolutions are successfully sought.

As a result of using the Legal Aid Board solicitors in all cases, there is a limited number of practitioners working in the field. Jurisdiction in Convention cases has also been limited so that a small number of senior judges hear cases which has allowed for expertise to develop. The legislation implementing the Convention allows for the making of Rules of Court, and in 2001 Rules were made relating to the expedition of cases.<sup>67</sup> Statistics appear to show that the court system operates relatively quickly in Ireland.<sup>68</sup> In 1999 judicial returns took an average of 115 days from application to final conclusion and judicial refusals took an average of 151 days. In both instances, these figures are similar to the global averages for the same period of 107 days and 147 days.<sup>69</sup> It is also to be noted that no applications were still pending at the end of June 2001.

Generally, the statistical analysis of applications received by Ireland paints a positive picture, with 61% of applications resulting in the return of the child either as a result of a voluntary agreement or a judicial return. This figure compares favourably with the global average proportion of applications resulting in return which is 50%. Of applications which went to court 80% resulted in the return of the child compared with 74% globally.

Ireland is in favour of international judicial collaboration and judges have been involved in international conferences in this area. However, to date, a liaison judge has not been appointed. There is also a non-governmental organisation working within the field of child abduction although the Central Authority does not work closely with this organisation.

Access applications to Ireland are uncommon with only one such application under the Hague Convention in 1999. In most cases, where possible, the Central Authority will suggest that applicants consider proceeding under the European Convention as legal aid is automatically available for access proceedings under this Convention. In contrast to the situation with return applications, legal aid is not automatically available to applicants seeking access under the Hague Convention. The one access application received by Ireland which was processed under the Hague Convention in 1999, was made by Hungary which despite being a member of the Council of Europe, is not a Contracting State to the European Convention.

<sup>66</sup> See <http://www.justice.ie> and also Preliminary Document No. 3, op. cit., n. 20.

<sup>67</sup> Rules of the Superior Courts (No. 1) (Child Abduction and Enforcement of Custody Orders Act, 1991), 2001 SIno. 94/2001.

<sup>68</sup> See Preliminary Document No. 3, op. cit., n. 20.

<sup>69</sup> See *ibid.*

## 9. SUMMARY OF CONCERNS

- It is possible to include a child on their parent's passport which may limit the effectiveness of measures to restrict passport application.
- Legislation on the Internet is only available up until 1998 and therefore, the latest Statutory Instrument detailing the Contracting States with whom the Convention is in force with Ireland is not available to be viewed on the Internet.

## 10. SUMMARY OF GOOD PRACTICES

- In incoming return applications translation of documentation, when required, will be arranged by the Central Authority at no charge to the applicant.
- The Central Authority also arrange translation in outgoing return applications at no charge to the applicant.
- The Irish Central Authority will liaise with the foreign Central Authority to provide status reports on the case and to obtain further information or documentation where needed.
- Legal aid is provided to all applicants in return proceedings regardless of means.
- A Legal Aid Board solicitor is usually appointed within 24 hours.
- Rules of Court have been made with a view to expediting hearings, and under these Rules provision is made for applications to be heard on the basis of affidavit evidence only.
- Regional Health Boards have responsibility for the care, safety, welfare and protection of children in their functional areas who are not receiving adequate care and protection. These bodies can therefore become involved where the application raises issues of child protection.

## APPENDIX

As at 1 January 2002, the Convention is in force between the following 65 Contracting States and Ireland.

<b>Contracting State</b>	<b>Entry into Force</b>
ARGENTINA	1 OCTOBER 1991
AUSTRALIA	1 OCTOBER 1991
AUSTRIA	1 OCTOBER 1991
BAHAMAS	1 DECEMBER 1994
BELARUS	1 JANUARY 2001
BELGIUM	1 MAY 1999
BELIZE	1 OCTOBER 1991
BOSNIA AND HERZEGOVINA	1 DECEMBER 1991
BRAZIL	1 JANUARY 2001
BURKINA FASO	1 APRIL 1993
CANADA	1 OCTOBER 1991
CHILE	1 DECEMBER 1994
CHINA-HONG KONG SPECIAL ADMINISTRATIVE REGION	1 SEPTEMBER 1997
CHINA-MACAU SPECIAL ADMINISTRATIVE REGION	1 MARCH 1999
COLOMBIA	1 JANUARY 1997
COSTA RICA	1 JUNE 1999
CROATIA	1 DECEMBER 1991

CYPRUS	1 JANUARY 1997
CZECH REPUBLIC	1 MARCH 1998
DENMARK	1 OCTOBER 1991
ECUADOR	1 JUNE 1992
EL SALVADOR	1 NOVEMBER 2001
FIJI	1 JANUARY 2001
FINLAND	1 AUGUST 1994
FORMER YUGOSLAV REPUBLIC OF MACEDONIA	1 DECEMBER 1991
FRANCE	1 OCTOBER 1991
GEORGIA	1 DECEMBER 1997
GERMANY	1 OCTOBER 1991
GREECE	1 JUNE 1993
HONDURAS	1 DECEMBER 1994
HUNGARY	1 OCTOBER 1991
ICELAND	1 JANUARY 1997
ISRAEL	1 DECEMBER 1991
ITALY	1 MAY 1995
LUXEMBOURG	1 OCTOBER 1991
MALTA	1 JANUARY 2001
MAURITIUS	1 SEPTEMBER 1993
MEXICO	1 OCTOBER 1991
REPUBLIC OF MOLDOVA	1 FEBRUARY 1999
MONACO	1 APRIL 1993
NETHERLANDS	1 OCTOBER 1991
NEW ZEALAND	1 OCTOBER 1991
NICARAGUA	1 NOVEMBER 2001
NORWAY	1 OCTOBER 1991
PANAMA	1 DECEMBER 1994
PARAGUAY	1 FEBRUARY 1999
POLAND	1 APRIL 1993
PORTUGAL	1 OCTOBER 1991
ROMANIA	1 APRIL 1993
SAINT KITTS AND NEVIS	1 DECEMBER 1994
SLOVAKIA	1 FEBRUARY 2001
SLOVENIA	1 DECEMBER 1994
SOUTH AFRICA	1 DECEMBER 1997
SPAIN	1 OCTOBER 1991
SWEDEN	1 OCTOBER 1991
SWITZERLAND	1 OCTOBER 1991
TRINIDAD AND TOBAGO	1 FEBRUARY 2001
TURKMENISTAN	1 JANUARY 2001
TURKEY	1 AUGUST 2000
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	1 OCTOBER 1991
UNITED KINGDOM-BERMUDA	1 MARCH 1999
UNITED KINGDOM-CAYMAN ISLANDS	1 AUGUST 1998
UNITED KINGDOM-FALKLAND ISLANDS	1 JUNE 1998
UNITED KINGDOM-ISLE OF MAN	1 OCTOBER 1991
UNITED KINGDOM-MONTSERRAT	1 MARCH 1999
UNITED STATES OF AMERICA	1 OCTOBER 1991
URUGUAY	1 JANUARY 2001
UZBEKISTAN	1 JANUARY 2001
VENEZUELA	1 JANUARY 1997
YUGOSLAVIA	1 DECEMBER 1991
ZIMBABWE	1 JANUARY 1997



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