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Comparative study on enforcement procedures of family rights

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Study on the enforcement of family judgments in Italy
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LEGAL QUESTIONNAIRE

1 Introduction

1.1 Substantive rights

In Italy the rights of the family are set out by the directions in the First Book of the Civil Code of 1942 (from now onwards “cc”) as modified by the reforms of the 1970s (Law dated 19th May 1975 No.159) and by the complementary laws to the code relating to separation and divorce between married couples (Law of 1st December 1970, No 898, Law of 6th March 1987 No.74).

Although a definition of the family does not exist, the model of the family relationship typically set out and safeguarded in the rules and regulations is that of the legitimate family. Social evolution has however demonstrated that there is no universal fixed model, and the increase in the number of cohabitations could not be a phenomenon to be ignored. The concept of the family therefore characterizes the place in which the personality of the individual and their emotional life develops, embracing both the legitimate family and the cohabitation. Although no special rules have been laid down regarding cohabitation, it is necessary to apply to the guardianship of the child the rules set out for a family founded on a marriage. We must in fact underline that the hostile attitude towards the recognition of explicit prerogatives for cohabitants has not threatened the position of the children of the couple, and confirm that the parent-child relationship has been planned to guarantee first and foremost the protection of children independently, today, of the type of current relationship between the parents. On the other hand we must state that the obligations towards the children ratified by art. 147 c.c. (obligations of maintenance, instruction, education) laid down for married couples are also imposed on unmarried parents under the effect of the combined directions of articles 261 and 279 cc.

Furthermore, the Italian legislature, aware that social changes reflect important variations in the rights of the family, has often intervened to adapt the system also with the scope of falling into line with the tendencies present in the European panorama. In such a direction, the recent revision of the Civil Code adopted with the Law of 8th February 2006 No.54, in force from 16 March 2006, introduced significant developments in the area of separation, remodelling, in particular, the subject of custody of children. The right of the child to a continued relationship with both parents, ratified at an international level, has in fact forced the legislature to prefer joint custody as a general rule, and to make sole custody the exception to the rule granted only when it guarantees the welfare of the child.

Furthermore, children are subject to specific constitutional guardianship (art 30 Constitution) and special conventions on international rights ratified by Italy (for example the Convention of New York on the Rights of Childhood of 20 November 1989; The European Convention on the Rights of Minors, Strasbourg, of 25 January 1996), in addition to European Community regulation.

Under the Italian system of rights and obligations imposed on the parent is identified by the term “parental authority”. A combination of elements focus on the guidance, care, control and vigilance of the child, obtained through the child’s instruction, psycho-physical development, and maintenance, as well as all the other possible responsibilities in caring for the child and managing their assets.

Only in the married couple do both parents become automatically entitled to the parental authority of the children (art. 316 cc.) which also governs any successive separation and divorce. In such a hypothesis we must however highlight that the exercise, in practice, of overseeing the management and care of the minor was assigned, before the reform of 2006, to the parent the child continued to stay and reside with (custody as set out under the Italian regulations includes the faculty of the minor to reside with the entrusted parent: the order or the agreement under which the child is entrusted to a parent states that the minor acquires the same *domiChile*). The only joint authority remaining concerned the extraordinary care of the minor. The reform introduced, will however have the effect of making the joint exercise of authority on every occasion if there are no reasons to justify sole custody. This will encourage greater collaboration between parents in deciding matters relating to the child also in the daily management of the child’s emotional life. As the above-mentioned reform is recent, there is still a lack of material cases on which to consider the legal application of the new rules.

With reference to the unmarried couple, the parental authority rests with the parent who has recognised the child, and to both parents if they have done so jointly and cohabit; the effective exercise of the right follows the same rules as for the married couple. However if the parents do not cohabit the care of the child rests with the parent the child lives with, or with the parent who was the first to recognise the child as theirs if the child does not live with either parent. When a conflict arises between the parents the Juvenile Court (*Tribunale dei Minorenni*) awards custody and visitation rights based on the law for married couples.

It is therefore evident that the different approach of the regulations does not have negative repercussions on the care of children born into unmarried relationships, differentiating only between the competent authority legally charged with resolving any possible controversy. And in effect if the controversy relates to the management and organisation of the child and its assets are, both for the legitimate family and for the cohabiting family, under the jurisdiction of the Tutelary Judge or the Juvenile Court (as at 1.1) depending on the nature of the matter to be resolved, all disputes arising in the phase of the dissolution of the marriage remain within the jurisdiction of the ordinary judge who deals with the separation and divorce.

Regarding the concept of the minor, the domestic regulations indicate a person who, appointed with legal capacity, is incapable of carry out legally significant acts before reaching eighteen years of age (the age of majority), an age conventionally held as the ideal age at

which the child reaches a level of maturity sufficient to take legally binding actions, active and passive, (art. 2 c.c.). The Civil Code permits, only in the hypotheses contemplated, the possibility that the minor up to age 18 is capable of specific acts at specific ages; at ten years old the minor can be heard on issues regarding his/her education, at fourteen years his opinion must be heard on the matter of guardianship, at sixteen he/she can marry.

1.1.1 Procedural rights in family law

As previously stated, the Italian rules only especially regulate the break-up of the married family. It is worth mentioning again that the cessation of the civil effects of marriage (divorce) occurs with the decision which concludes the judgment on the investigation of the possibility of maintaining the material and spiritual union between the spouses, namely the failure of married life. The causes of divorce are indicated by law (1st December 1970, No.898); only some can lead to the immediate dissolution of the union (criminal conviction for serious offences, annulment of marriage executed abroad, failure to consummate the marriage, and the change of sex of a spouse); in most cases however there must be a three-year separation of the spouses.

The separation can be declared by a judge (art. 151 cc.) only when the continuation of the marriage has become intolerable or such as to bring prejudices to the offspring; the separation does not have an effect on the tie of the marriage itself, but determines only the temporary cessation of certain obligations deriving from the marriage (for example the obligation of cohabitation). After three years from the separation the parties can go to court to request the formal dissolution of the marriage.

Each of the two procedures are made up of two stages: the presidential stage and the judicial stage.

In the former the parties appear in front of the President of the Tribunal in an attempt at conciliation (art. 708 cpc.). If the President does not achieve conciliation, by order, he fixes temporary and urgent provisions in the interests of the spouses and children (for example custody, maintenance etc.), and he nominates a preliminary judge to pursue the intended aims with reference to the relevant orders (art. 163 cpc. and ss.). In the second stage, the process, the judge has to make decisions on all matters relevant to the parties in personal and financial matters, and can modify or revoke the order of the President if there are changes in circumstances (articles 177 cpc. and 708 cpc.).

It is possible for the parties to reach an agreement on the conditions of separation and/or the divorce, in which they also agree arrangements for the child, and visitation rights for the parent without custody. In these cases the parties present a consent order (consensual separation or divorce) which consents to proceed without activating the hearing. Following the hearing in front of the President of the Tribunal the court reports the conditions agreed by the spouses and, if evaluated by the court in Chambers and the provisions conform with the interests of the minors, the separation and/or divorce is approved.

In both procedures the President can listen to the minor when he considers it necessary. At the hearing stage the obligatory intervention of the Public Prosecutor is provided for to supervise the interests of the minors.

We must state that following the declaration of the separation and divorce the parties can, at any time, ask for the arrangements to be modified regarding the offspring (art. 9 L 898/1970; art. 710 cpc., art 737 and ss. cpc.) through a procedure of voluntary jurisdiction, in Chambers, which represents the quickest and least formal procedure of the ordinary procedures. Collaboration with the judge for the management of a specific matter is essential, thus there is a great discretion on the part of the deciding body and in the handling of the case. Such procedures generally conclude with a decision which is not suitable to be passed judgment on, but is always revocable and modifiable for the right reasons.

1.1.2 Law of Procedure

The Italian law of procedure and in particular the procedure for carrying out legal provisions is set out in the Civil Procedure Code in force since 21st April 1942 (from now onwards “cpc.”) and in the current directions of the code approved by Royal Decree 1941 No.1358.

The aim of the enforcement process is to satisfy the claim of the applicant and therefore achieve a practical result which the respondent would have had to fulfil in a legal obligation.

The enforcement process offers various specific types of result to be obtained in order to put into effect different substantive rights. We can distinguish between fundamental types of enforcement action: 1) enforcement in a general form, articles 513-604 cpc. (certain assets are seized to transform into cash); 2) enforcement for delivery or release (providing the creditor with an identified asset of the debtor; articles 605-611 cpc; 3) the enforcement of the obligation to take action or not; articles 612-614 cpc. (which entitles the creditor to specific performance or the annulment of action already taken which violated the creditors’ rights).

The existence of the right to enforce is necessary to activate the listed procedures, namely a judicial provision with executive effect (for example, sentences passed in final judgment, sentences of first and second degree which are by law temporarily enforceable, decrees or orders to which the law expressly attributes such force etc.) or other extrajudicial act, which the law recognises as being enforceable (for example drafts, cheques, notarial deeds etc.).

In order to proceed to enforcement, it is necessary to notify the debtor of the right to enforce, and of the formal order (injunction) itself to fulfil the resulting obligation. Within 90 days of notification of the injunction, in the absence of voluntary compliance, the creditor can commence enforcement proceedings. Such proceedings require the intervention of the enforcing judge in the relevant territorial court, and the collaboration of the Court Officer who will materially pursue the proceedings, and whose functions vary according to the type of enforcement to be carried out, notwithstanding the intervention of subjects delegated with particular powers over the valuation of the assets subject to the injunction and the sale of the same, when necessary.

The Bailiff undoubtedly plays a determining role as he oversees the initial and substantive phase of proceedings. The execution in general form, for example, begins with the request of the party to the Bailiff to proceed to the attachment of the assets of the debtor. The

function of the attachment (art. 491 cpc.) is to bind the assets by subjecting them to the enforcement to ensure a worthwhile result at the end of the proceedings. The bound assets will then be the object of sale or assigned to a creditor (art. 502 cpc.) under the petition presented to the judge by the party.

In the enforcement for delivery and release, the judge's intervention is only possible because the entire procedure occurs under the responsibility of the Bailiff with powers of enforcement, and the injunction goes to the place in which the assets are retained, for the delivery to the creditor who, if necessary, can make use of the assistance of Public Order forces. The Bailiff notifies the party at least ten days before the relevant date.

In the enforcement the Bailiff must follow the directions of the judge, who orders the steps in the claim and the suitable enforcement to obtain the desired result, upon hearing from the relevant party.

In all cases the Bailiff draws up a record and receives a sum, paid by the creditor, for expenses relating to his work.

It is evident that the solutions indicated above are intended to resolve all cases in which the rights concern mobile and immobile assets. When specific rules have not been laid down for enforcing directions in family cases, it follows that the analogical application of the rules to carry out decisions relating to children may not always be appropriate, as it is not possible to duly ponder over the well-being of the intended subject regarding the consequences of the enforcement. This is particularly important if it refers to situations, such as those concerning children, not open to an economic valuation or not characterized by the possibility to proceed to performance against the wishes of the party subject to the order (for example visitation rights).

From this viewpoint the application of the general rules has produced consistent discussion about the possibility of introducing some exceptions and/or adaptations to the type of case which unfortunately still hasn't resulted in legislative reform in that area.

PART 1. ENFORCEMENT IN DOMESTIC CASES

1A. Procedures and practices for enforcement in domestic cases

1. Description of the general law for enforcement of:

a. decisions on custody, including orders on the place of residence of the child

b. orders on contact and/or access rights

The civil enforcement rules are laid down in the civil procedural law and in the Civil Code. We list the following instruments to enforce the decision for all child orders:

1. The most effective remedy at a parent's disposal is the appeal to the enforcing judge under art. 612 of the Civil Procedure Code; this provision is generally used to get someone to do or not to do something. The territorial judge with jurisdiction can compel the parent to hand over the child with the help of bailiffs. This remedy requires a decision made with the right of enforcement which must be advised with the injunction in order to comply with the order. The judge, who sets out the claimant's rights, orders the bailiff to enforce the decision on custody or visitation rights also with the police present; those orders allow the bailiff to hand over the child to the parent. The judge has the power to or-

der the specific care of the child's needs after the hearing of the applicant and the defendant.

2. Next to that classic remedy some judges (see Cass 1st December 1966 No 2823 in *Foro it.* 1967, I, 273) have recognised the possibility of enforcing the child order with the "abbreviate execution" provided for the separation process (*ex.* Art 6 L. 898/1970). This informal process gives the bailiff the power to hand over the child without any legal formality except the existence of a judicial decision conferring the child custody to the claimant parent. That remedy is more common because it is an immediate method of protecting the children's orders and more effective because of the presence of the bailiff and the intervention of the police. The simplification of such an enforcement procedure postpones to a possible later stage disputes or difficulty in executing the order. In similar circumstances the judge which has issued the provision, with recourse to the interested party, have to proceed to an analysis and solution of the dispute during the enforcement. In the most recent legal approach, such a remedy is effective in all cases in which the order for custody of the minor hasn't yet been concluded definitively, but it is necessary to follow provisional directions (usually cases in which the separation order has yet to be made but the judge has laid down interim directions). The characteristics of such an instrument are to evaluate the promptness and flexibility of the order which remain at the hands of the judge invested with a more thorough knowledge of the whole situation and capable of possibly evaluating with great skill any possible resistance on the part of the child.

3. Another possibility is to enforce the child order with an appeal to the tutelary judge, even if his power, in this matter, is served. As the magistrate has important functions in the management of children's affairs (even in economic issues), he can only enforce his decision with the help of all administrative bodies and all legal authorities. These remedies are set out in the Italian Civil Code *ex.* articles 318, 337 and 334, and they play an important role in cases of unmarried parents.

4. At the very least we must mention the presence of a remedy suggested by an old judicial practice; the appeal to the enforcing judge under art. 605 of the Civil Procedure Code regarding the order for hand-over. This process requires the notification of the injunction and the initial summons; it carries the power of the bailiff to take the child against the parent's will to hand over to the other parent. In these cases the judge plays a part in the proceedings only at the request of the applicant. Such a practice has today been abandoned because of insurmountable criticism mostly from recent jurisprudence and doctrine. Such a procedure gives rise to the aim of delivering an asset to the applicant and therefore unacceptably treats a human as an asset, a forced interpretation not accepted; the custody, in effect, isn't a right to have the object of the order delivered, but to the contrary a ruling on a personal relationship between subjects, and therefore such a procedure is clearly not capable of governing the complexity of the situation concerning the parent-child relationship.

An "administrative" process to enforce a child order is carried out under the Civil Code. It concerns the enforcement of the Juvenile Court's decision when it is necessary to take the child away from the parent because he/she is in danger. The court gives custody to the relevant local authority or health service with the aid of police assistance and provides for the intervention of social services. These latter bodies take steps for the items taken in the delivery of the minor, and arrange his/her placement with the authority or person determined by the court. Such a remedy is by now limited to cases in which it is necessary to enforce a limited direction relating to the legal authority of the parent.

As regards the visiting order, we must underline that it is impossible to enforce the decision against parent's cooperation. There is no legal instrument to compel the parent to visit and participate in the child's life against his/her will. On the other hand it is possible for a remedy to enforce visitation rights against the parent refusing access.

2. Comments as to the practice of the law with respect to:

a. decisions on custody, including orders on the place of residence of the child

b. orders on contact and/or access rights

The enforcement of the child order is a complex subject because of the lack of specific provisions.

The enforcement of general rules is not fair because it does not consider the child's specific needs and the difficult issues involved in the family crisis. A specific legal intervention should be requested to utilise a flexible instrument that can ensure effective child welfare. These situations have caused many problems in ensuring fair justice in practice.

All legal professionals believe that the most important interest in the enforcement process is the child's. The child cannot be considered as an object, and needs a suitable legal instrument to cover his/her needs. In the family proceedings all legal actions have to take into account the child's age, their psychological welfare, and their possible refusal to conform with the judge's custody order. With this in mind the Court of Cassation has clarified that the handover of the child always requires a careful valuation, and has therefore recommended the enforcement process described sub 1., which is most commonly used.

Such a final remedy, in effect, presents the most suitable instrument among those already in existence in our regulations, to guarantee the well-being of the child in that it allows the judicial body charged to listen to the minor aged 9-10 years. The situation expressly set out only relates to the process of separation and cannot impede the application of all provisions pertaining to the minor both in an interim and conclusive context, with the requirement of satisfying with flexibility and timeliness the interests of the minor.

Ruling out the enforcement of the delivery of the minor as being inconceivably similar to an object, the above-mentioned reasons furthermore induce the court to also consider inefficient the administrative provisions which delegate to social services the entire responsibility of a procedure, without however providing sufficient and adequate instrumentation and often without suitable legal support.

For the sake of completeness, we must make reference to the existence of a minority view that only the enforcement of definitive directions should be possible, but not those *ad interim*. Such a restricted interpretation of the standard directions would impede the execution of, for example, the order of the President of the Tribunal which, in a separation procedure, bestows temporary custody of the minor upon a parent whilst awaiting the outcome of the whole proceedings. The paradoxical result of such thinking would leave most directions unfulfilled concerning the children and so the aforementioned approach is rarely followed.

3. Supporting orders

a. what supporting orders (i.e. 'compliance orders' or 'measures to further the effect of the family law judgment') are available under domestic law?

b. can you make any remarks as to legal practice (i.e. what supporting orders are practicable, what is the usual content)

The claimant can appeal to the appropriate court in order to get a supporting order and to induce the other parent to respect the child order.

There are several ways of indirect coercion applying the threat of criminal law. A first remedy is to bring an action (a criminal claim) against the parent who doesn't comply with visiting rights to the detriment of the child's needs. The parent will be condemned for breach of family care (art. 388 Criminal code) with imprisonment from 1 to 3 years, or a fine from € 100 to € 1000 .

As regards the enforcement of other orders we can mention the breach of parent's duty (art. 570 cp.) which punishes the guilty party with imprisonment up to one year, and a fine from € 100 to €1000. Finally, we have to mention the offence of child abduction (art. 573 e 574 Criminal Code); these provisions punish the offender with imprisonment from 1 to 3 years for a parent abducting a child under 14 years old or holding him against the will of the parent with custody. As regards the child over 14 years old his abduction is dealt with under the general kidnapping offence (art. 605) that punishes the abductor with imprisonment from 1 to 10 years.

With reference to the civil remedies available, to encourage respect for the court's directions relating to the child, we can highlight the possibility of the appropriate legal authority taking legal steps to declare and end the custody rights of the parent failing to comply, *ex art.330 cc*. Such a remedy is available in all cases in which the parent does not respect the obligations relating to care, guardianship and the interests of the minor (for example visiting rights) placing the child in a situation of extreme suffering. It is evident that in similar cases the expulsion of the uncooperative parent does not exclude prejudice to the child, but it can induce the parent to start acting in such a way as to excluding access.

It is still possible for the parent to ask for the other to be sentenced by paying compensation for the damage incurred to the child for violating the provisions laid down. The payment of damages is generally provided by art 2043 c.c., to remedy the prejudice incurred to the child and also to the parent for expenses incurred due to the lack of collaboration of the spouse with custody of the minor.

On the other hand the right to damages is certainly also recognised for the parent without custody, arising from behaviour of the parent with custody which ostracizes the child from the other parent and affects their visiting rights. The courts (amongst the most recent examples v. Trib. Monza 5 November 2004 in *Fam. E dir.* 2005, 79) have received requests for compensation for the interruption of the relationship with the minor offspring, from having failed to meet the legitimate rights of the parent with a resulting prejudicial effect also on the very nature of the relationship.

The law of reform in force from 2006 has then expressly stated that the judge can admonish the parent for any obstacle he has placed to prevent the correct custody arrangements from being carried out, and can then impose the sanction of compensation, in favour of the child or the other parent. The offender may pay between €75-€5,000 in favour of the court office administering fines and punitive payments (the "Cassa ammende").

In addition to such prohibitive measures, there are also some measures for preventative custody.

First and foremost the married couple (in the process of separation or divorce) are forced to communicate changes of address within 30 days in order to facilitate the variation of each provision in the interests of the minor. The non-cooperating spouse can be sentenced to pay compensation for damages caused to the other spouse for the difficulties met in tracing him/her.

We must clearly state that the expatriation of the minor is practically limited by the conditions at the time of issue of the passport; expatriation is only possible with the consent of the parent with custody under art 3 of Law 21 November 1967 No. 1185. The reform brought about by Law 16 January 2003 No 3, art. 24. has, amongst other things, clarified that the issue of the passport is not based on the authorisation of the tutelary judge only when the consent of the other parent with custody has been agreed or when the applicant is the person with sole custody.

For the parent who does not have custody, it is possible to apply to the tutelary judge to prevent the expatriation, when the reasons against such expatriation are in the interests of the minor.

Furthermore it is possible for the parent who fears that the child may be taken away, to indicate this possibility and obtain a direction preventing the child from being expatriated, and stating the relevant border in the case.

We must nonetheless state that the possession of a passport is not necessary to move between Member States, for which only an Identity Card is sufficient to cross borders. This must be issued with the consent of both parties, if sharing joint custody. In these cases we can apply the same regulation laid down for the issue of the passport.

1B. Specific issues relating to the enforcement of family law judgments in domestic cases

1. The organisation of organs and institutions involved in enforcement of family law

a. Regulation under substantive law (legislation that establishes the organ or institution and regulates its tasks and powers)

b. Procedural law rules relevant for the functioning of these organisations (procedural rules on the role of these organisations in the enforcement of family law decisions)

c. Practical aspects relevant for the legal position of these organisations

The judiciary bodies which must be involved in enforcing provisions regarding minors are: The Civil Court (“Tribunale civile”), the Juvenile Court (“Tribunale dei Minorenni”), the Tutelary Judge (“Giudice Tutelare”), and the Executive Judge (“Giudice dell’Esecuzione”). For the actual enforcement of the directions, the Bailiffs, the Child Protection Services and the Public Order Forces must work alongside the aforementioned organisms.

With regard to the judicial jurisdiction the relevant regulations and their practical application are contained in the First Book of the Civil Code and in Book I and III of the Civil Procedure Code. Yet the lack of rules for coordinating the often competing authorities of such organs has often led to contrasting directions from the executive judge.

The process of separation and divorce must take place, as previously mentioned, before the Civil Court, which is charged with issuing directions concerning the conditions of minors. Enforcement of the directions of the civil judge is devolved, under the general rules (art 9 c.p.c.), to the executive judge so that it would be legitimate to render the latter suitable to execute all orders relating to children.

The fact that the directions for custody and visiting rights are often temporary in nature, has, nonetheless, induced some legal professionals to distinguish the execution of such orders from those of a more conclusive character which concluded, over a period of years, the process of separation and/or divorce.

Only in these last cases the enforcing judge was considered to have jurisdiction.

The interim directions have been, at times, (v. Cass. Civ. 7 August 1990 No.7957) enforced by the means indicated under 1A1 of No.3, retaining the tutelary judge as the entity responsible for the supervision of the well-being of the child, in accordance with art 337 c.c. and also art. 3 and 14 of the Law dated 21st November 1967 No. 1165, and the instruments for its application.

Only the recent Court of Cassation (Cass. civ. 1st April 1998, No. 3374) has clarified that the performance of the directions for custody and visiting rights fall within the jurisdiction of the enforcing judge, thereby limiting the jurisdiction of the Tutelary Judge to the cases expressly listed in the Civil Code (articles 326 and ss. c.c and 45 and ss. for the application of the Civil Code), in the matter of guardianship, management of the child, conflict of interests of the child with the parents, and the issuing of a passport .

The Juvenile Court is a judicial organ, set up by Royal Decree on 20th July 1934 No. 1404, within each Court of Appeal, composed of two professional judges and two experts in children's issues (a man and a woman selected from the areas of psychology, sociology, criminal anthropology, and education, who are all at least 30 years of age, nominated for three years with the Decree of the President of the Republic on the order of the Higher Council of Magistrates "Consiglio Superiore della Magistratura"). Its aim is to guarantee an interdisciplinary evaluation in approaching each single case, by authorising the involvement of different professional figures: psychologists, sociologists, and social services' assistance. It has various powers, listed in art. 38 for the application of the Civil Code, which concern generally the assistance, protection, and sustenance of the minor: legal declarations of maternity and paternity, assignment of the paternal surname, authorisation of the minor to carry out work, repatriation in the case of abduction of a minor, etc. It is the body with the power to resolve matters relating to children of unmarried couples, laying down for example in order the authority of the natural children, considering the custody of the minor in the cases in which he/she has been recognised by one of the married couple, but that person is not the legitimate parent, authorizing in this case the insertion of the child into the legitimate family and thereby providing visiting rights. Such a body enforces directions issued in the form of an "administrative procedure", illustrated at 1A1.

A new reform concerning divorce proceedings has settled joint custody to both parents from 2006. This innovation has been introduced to solve the current problem concerning exclusive custody and to guarantee a relationship with both parents for the child's welfare. The reform cited in 2006 has expressly confirmed the authority of the civil judge to carry out directions relating to children, thus there would seem to be a resolution in line with all problems relating to jurisdiction in such an area. At present we will not highlight relevant facts to mark a prevailing view on the application of the new provisions, as they only came into effect in February 2006. We can only indicate an initial contrast reflected in the application of the rules. The decree of the Juvenile Court of Milan of 12th

May 2006 has delegated to the ordinary Court the authority over custody of the children of unmarried couples. To the contrary the decision of the Court of Milan of 28th June 2006 No. 7711 held that the reform has not modified the authority over custody of the children of cohabiting couples, who remain within the jurisdiction of the Juvenile Court.

The collaboration of Bailiff is indispensable for the execution of judicial directions in general, and in particular relating to children. The Decree of the President of the Republic of 15th December 1959 No. 1229 (Order of the Judicial Office, with successive modifications and integrations, amongst the most important of which is that they refer to the laws of 11th June 1962 No 546 and 9th February 1963 No 66) and the law dated 20th November 1982 No.890, contain the discipline of auxiliary bodies of the judicial order. In civil law also article 59 cpc. indicates the functions of the judicial official which are of a jurisprudential and administrative nature. The enforcement of the orders of the judge belong to the former, that of drawing up the verbal record of their own actions, and that of preparation, amongst which is included the prevailing role of the notification of acts and sentences as well as assisting in hearings. Every Official who has participated in and passed the special admission test is entrusted with an office where he must remain resident, and his territorial jurisdiction coincides with that of the jurisdictional court of the first degree. Their number varies according to the requirements of the particular district.

The bailiffs are on a par with employees of the civil state (Legislative Decree dated 30th March 2001 No. 165) with regard to guarantees of employment. The bailiff, by virtue of his particular functions has to be impartial, honest and independent, and cannot take on public or private posts, work in commerce or industry nor any profession, or accept paid work in companies. Any bailiff contravening such regulations is dealt with by the Minister for Justice or the President of the Court of Appeal to put a stop to work incompatible with his functions, as well as impose possible disciplinary sanctions which can be serious, leading to dismissal. The bailiffs are subject to surveillance by the Commission of every Court of Appeal, comprising the President of the Court, the State Prosecutor, or by magistrates from those appointed by the head of the Bailiffs' office. The President of the Tribunal has, furthermore, the task of overseeing all bailiffs in the district.

The bailiff cannot refuse to undertake acts which fall within his jurisdiction without due cause, he must perform actions without delay, and, in any event, not outside any possible period fixed by the authority governing such matters. In the case of impediment, he must refer to and justify the reasons to the head of the office.

The parties who make use of their services must pay in advance the postal expenses, fees, and indemnify travelling expenses arising from the acts requested, for all processes, with the exception of those relating to the family and work. With regard to enforcement action the parties must pay the appropriate sum. The bailiffs assure their own presence in undertaking the work, and organize their own timetable of work, aimed at maximum flexibility for the demands of the work to be carried out and entrusted to them.

The payment, set by the Public Administration, is made up of a fixed sum (a scheduled payment and individual indemnity based on length of service) and a variable sum based on the cost of transfers, a special inclusive payment and a percentage on the sums earned by the Exchequer, defined by the collective contract of the department (collective national employment contract of 24th April 2002).

Finally, in respect of the intervention of social services, their role is defined by the following legislative sources: The Decree of the President of the Republic of 24th July 1977 No.

616, the Laws of 11th August 1991, No. 266, 8th November 1991 No. 381, 31st March 1998 No. 112, and 8th November 2000 No. 328. Furthermore, at an economic level, the Law of 28th August 1997 No 285 has set up a national body for a series of interventions concerned precisely with childhood and adolescence for use by the local entities to promote the activities of such services.

Such a comprehensive system of law has produced a predisposition and disbursement of services aimed at clearing away and resolving the needs of the person, the family and children in particular, as well as guaranteeing solutions within the judiciary system. The current arrangement provides the decentralization of institutional responsibility for such organisms thereby distinguishing the powers of local councils, provinces, regions, and the state. At a local level (local council) it is preferable to delegate the disbursement of services and the work as such functions require a strong link with the territory to be effectively undertaken. At a provincial level the functions of training professional figures are devolved, a regional level deals with the area of planning, coordination, and the matters of local intervention. The political-social objectives are determined at a state level, as well as the substitute powers in the case of the failure at a regional level. It should be noted that in the last few years a series of private non-profit making concerns (for example foundations, associations, voluntary organizations, etc.) have been set up in order to assist in social matters.

The local bodies are however those which operate under the judiciary authority.

When the judge considers an intervention of the support offered by such organisms necessary, he informs the appropriate authority of the act to be carried out, with the aim of identifying the provision most suitable for the guardianship of the minor. The possible actions to be taken include the gathering of information, recreational and educational services, the service supporting the parent-child relationship, monitoring the conditions of the child and the collaboration in carrying out the directions of the judge. Such a collaboration is carried out through a working team composed of a social worker, education professional, homecare assistant, and if necessary, with the collaboration of a psychologist, neurologist and child neuro-psychiatrist. These social operations are dependent on the public authority from which they receive their work, and at the same time they are subject to the authority of the judge who has requested their intervention. When they undertake the action requested by the judicial body, they assume the role of public officials: in carrying out the institutional work they have the obligation to inform the Tribunal of the conditions in which they find the child and to request in urgent cases the intervention of the Public Authority (State Police, Mayor, State Prosecutor). In the exercise of their functions the social worker is subject to the laws of confidentiality and must not reveal to third parties any details relating to the intervention in which he/she participates.

The social worker is the figure who provides advice on solving problems of the subject in question when in difficulty, and he/she also triggers social assistance when necessary, ensuring the judicial provisions are complied with. The professional education expert is responsible for supporting the educational programme of the child and promoting and contributing to the growth and social development of the child particularly in the sphere of the parent-child relationship. The homecare assistant, finally, is the supporting presence in the everyday management of the child, above all when it becomes necessary to sustain the permanent placement of the child at the family home.

2. Time limits relevant for enforcement proceedings

a. Time limits for appeal, both against family law decisions and against decisions supporting their enforcement

The Civil Procedure Code sets out the peremptory terms leading to dismissal.

In general, under art 325 cpc. the terms (briefly) are: thirty days to file an appeal against the sentence of the Tribunal and the Justice of the Peace; 60 days to file a request for a reversal. Such terms run from the date of notification of the sentence apart from exceptions to which articles 326, 397, and 404 cpc. apply (extraordinary revocation, disputes laid down by the Public Prosecutor, disputes raised by a third party who is adversely affected by the effect of the sentence).

In cases in which the sentence has not been notified, long term notification starts to run a year from the publication (filing) of the sentence beyond the appeal and recourse to the court of cassation is no longer possible. Such a rule is applied in cases of void notification (for example notification made to the party personally instead of to their nominated legal representative).

Both time limits are interrupted when the parties (or their lawyer) die or lose their capacity to act; in this case the time begins to run again from the day in which the notification of the sentence is renewed.

Both time limits remain suspended during the period of weekday suspension of the court terms (art 1, Law dated 7th October 1969, No. 742) from 1st August to 15th September of each year; they start to run again from the end of such a period.

The suspension is furthermore effected when a ruling on jurisdiction has been requested, and continues until the conclusion of such a matter.

When the time limit for contesting a decision has expired, or all available methods of contesting a decision have been put forward, the ruling then becomes final (*res iudicata*), in other words full and final. The sentence becomes incontestable and the parties cannot then request a second consideration of the judge's ruling; the decision requires the parties and their heirs to comply with the judgment of the judiciary body (art. 2909 c.c.).

In respect of family law in particular, it is stated that the final judgment of separation and divorce becomes definitive only at the stage when the dissolution of the couple is ordered, although this does not take the same force if pertaining to the children. All directions relating to the offspring always have effect *rebus sic stantibus*; in other words they are modifiable provisions, when there is a presentation of a special application in which a change of circumstances is evident.

Regarding the procedure for seeking a modification, the only method open to a party is to file the complaint within 10 days of notification of the judgment or from the lodging in the registry if it relates to only one party.

The Civil Procedure Code provides moreover for the possibility of contesting the method used to enforce a direction, thereby distinguishing between opposing the enforcement itself, and opposing the enforcement methods themselves.

The first form (art. 615 cpc.) consists of the respondent contesting the right of the applicant to proceed with the enforcement action. The subject of the contestation can relate to the power to enforce, the active and passive legitimation of the action (the applicant and respondent), and the nature of the assets subject to the procedure.

The opposition to enforcement consists of the respondent contesting the formal capacity of the power of enforcement and other acts in the procedure; this evidently relates solely to the processes that render invalid a single act. The opposition must be de-

clared within 5 days from the moment in which the act in question has been carried out (art. 617 cpc.).

The opposition triggers the start of the ordinary procedure during which enforcement can be suspended at the request of a party. In the case of rejecting the opposition, the enforcement procedure will resume its course. If the opposition is validated, the enforcement acts undertaken are ruled illegitimate and cease immediately to have effect, apart from payment of compensation caused by the respondent.

Even though the procedure to challenge a ruling is applicable for all forms of enforcement, we must clarify that such an instrument is scarcely used in relation to guardianship and other provisions relating to offspring. Only a few cases have been recorded at the Tribunal involving such situations. Such jurisprudence among other things applies to opposition to the international abduction of a minor, a case in which it is probably necessary to prevent the minor from being taken abroad, which may require the use of all means possible to prevent such action. In such cases it is more important that the minor remains within the Italian jurisdiction than the execution itself, and it is more effective to turn to the judicial authority to modify the conditions for custody.

b. Any other time limits that have an effect on enforceability

The general rule states that all rights can be extinguished, with the exception of the rights which the law considers unalienable amongst which is included the authority of the parents (art. 2934). The reason for the exclusion is that these rights are attributed to the holder in the public interest, and often constitute not only a power, but also an obligation, thus the legal rules are not adversely affected by the inertia of the subject.

In all other cases, the Civil Code states that a right which is not exercised is debarred after ten years, except for cases set out with a short limitation period when strictly stated (for example the right to recover payment expires after five years; art. 2947). Such limitation periods are suspended in the course of a possible hearing and begin to run again from the final judgment of the decision and during the executive proceedings.

c. The effect of appeal on enforceability

In the domestic regulations under art 474 cpc. there are powers of enforcement beyond the sentences passed in final judgment. The rulings of the Court of Appeal (art. 337 cpc.) and also sentences of the first degree (art. 282 cpc.), are together with the regulations which the law recognises as provisionally enforceable, like those generally pertaining to minors.

It therefore follows that the contesting the judgment does not have an immediate direct effect on enforcement; it is possible, nonetheless, that the judge, at the request of a party, suspends the effective enforcement of the decision or a contested sentence when there are serious and well-founded reasons (art. 282 c.p.c.) so as to the paralyze the enforcement not already effected or interrupt the effects of actions already undertaken.

d. The effect of the passing of time on the enforceability of a family law judgement

It has already been stated that rights are debarred, except in exceptional cases and dispensations, after ten years from the moment in which the rights arise. The same rule applies

with reference to the inherent right to propose the enforcement of a direction of the judge. In effect the passing to the final judgment determines the initial moment of the limitation period so that the right to enforce the judgment not undertaken within ten years, or within a shorter period if applicable as outlined above, becomes statute-barred.

e. The effect of change of circumstances on the enforceability

Article 9 of the Law dated 1st December 1970 provides that if justified reasons appear successively for the judgment pronouncing the dissolution of the marriage or requiring all the effects of the marriage in civil law to cease, the Tribunal can, at the request of a party, revise provisions concerning the custody of the child and those relative to the extent and means of the contributions relating to the children and spouse.

The law does not indicate in detail the presumptions to make use of such a provision, therefore all changes capable of affecting the psycho-physical well-being of the child may be suitable to justify the request (for example the deterioration of the parent-child relationship, a change in residence of the parent with custody which may undermine the psychological stability of the child, the commencement of a personal relationship between the parent with custody and a third party which could compromise the serenity of the child, the decline in parental authority, etc.).

The modification of the provisions relating to the offspring (art. 710 cpc.) requires the institution of proceedings in Chambers (art 737 cpc.), for which there are no final time limits for commencing proceedings.

The proceedings are concluded with a judgment which can be contested (in the Court of Appeal) within the time limit of ten days from the notification of the decision or from the filing at the registry if the matter only relates to one party (art. 739 cpc.). The judgment takes effect when either no appeal has been filed, or it has been refused, except in the case in which the judge has immediately declared enforceable for reasons of urgency (art. 742 cpc.). That judgment cannot be appealed in the Court of Cassation.

The same rule applies to the rulings of the Tutelary Judge which is appealed in the Civil Court and the Juvenile Court can be contested in the children's section of the Court of Appeal.

We must make clearly state that in the cases of separation and divorce, at the first stage of the proceedings the President of the Tribunal issues interim directions and urgent advice in the interests of the offspring to avoid a situation where a lack of agreement between the uncooperative parties prejudices the children's positions in the time that elapses until the conclusion of the proceedings. Such a ruling is summary, based simply on the facts learnt at the first contact with the spouses, and it is preliminary in nature in so much as it is always absorbed into the final ruling on the case. The order loses effect when the final judgment is handed down and is modifiable by the executive judge independently of the change of circumstances (art. 4, Law dated 1st December 1970), if opportune. A party can appeal against such provisions to the Court of Appeal.

3. Coercive measures to ensure enforcement

a. Measures available by law

b. Measures usually taken in practice

The only possibility set out by the regulations which consents to the forced enforcement of the proceedings is the intervention of the Public Order forces. In effect during enforcement the Bailiff can take advantage of Public Order forces when the circumstances require it (art. 476, 513, c.p.c.). In particular such an intervention is indicated in the expedited enforcement, as well as on the order of the judge, *ex. art. 613 cpc.*, in enforcing the obligation to do something, precisely to eliminate the difficulty that arises during enforcement.

In most cases, left at the discretion of the Bailiff, the practical performance is significantly reduced due to the intense emotional impact and the extreme stress that is felt by the child involved in the process.

c. Taking of coercive measures when the child opposes enforcement

The problem of the opposition of the child to the enforcement of the directions which involve him is dealt with in the more complex area concerning the preferences expressed by the child. Under art. 147 cc., the parents must take into account the hopes and wishes of the child, thus recognizing the right of the child to make decisions within limits which do not clash with the rights of other members of the family, and also which do not prejudice the psycho-physical health of that same child. If the child is in a position to exercise a choice as to who is granted custody, then the judge must weigh up such a preference; the possibility that the preference is overruled only occurs if there are concrete and specific reasons indicating the incapacity of the child to understand the consequences of the opinion expressed (legal doctrine is consolidated on this point; v. Cass 2nd June 1983 No, 3776 in *Giur. It.*, 1983, I, 1, 1352.).

4. The impact of other legal or practical conditions relevant during the enforcement e.g. the hearing of the child

Although the Convention (which was ratified by the Law dated 27th May 1991 No.176) on the rights of the child signed in New York on 29th November 1989 protects the right of the child to express his opinion on any situation affecting him and therefore to be heard in any judicial and/or administrative proceedings the national provisions regarding the enforcement of such a right in domestic proceedings is fragmented and incomplete. The law on divorce and separation allows the judge to listen to the children under eighteen years of age when it is strictly necessary in view of their age, also for issuing provisions of an interim nature. It is therefore evident that there is a protective approach towards children concluded with the involvement of the child only in the cases in which listening to what the child has to say will not cause him/her trauma.

We proceed generally with the use of an expert or the intervention of social services avoiding direct questions that can imply choice on the part of the minor or force him/her to give preference to one parent. We make use of a procedure, which is more frequently applied during divorce, when the relationship between the married couple have by that time stabilized and the level of animosity has abated; these bad feelings so often characterize the previous phase of the separation.

The comprehensive provisions, both domestic and international, which tend to recognise the wishes of the child in providing a role for him/her to actively participate in the decisions which are made in his/her interests, are the product of the peaceful admis-

sion that the child no longer represents only a weak figure to be cared for, but he/she is also the owner of subjective autonomous rights which cannot be ignored.

Although the Constitutional Court has implicitly acknowledged such an approach with the order of 15th November 2000 No.528, the Italian legislature hasn't yet imposed on the judge the obligation to listen to the child, and nor has it conferred an ample power to make arrangements for speaking to the child. Moreover, the express wishes of the child are not considered binding on the judiciary body which must evaluate the express choices of the child.

The judge must carry out a comprehensive evaluation of the interests of the child which in some cases can lead to the adoption of provisions conforming with the express wishes of the same (for example Cass. civ. 2nd June 1983 No. 3776 in *Giur. It.* 1983, I, 1352; Court of Appeal Genova 6th July 1995 in *Dir. Fam.* 1996, I, 132) but also which justifies at the same time the adoption of the different choices (Cass. civ. 3rd December 1985 No. 6063; Cass. civ. 11th June 1991 n. 6621 in *Foro It.*, 1993, I, 1247).

The introduction of reforms of the rights of the family has made it possible to hear from a child of 12 years of age and also a younger child if he/she is capable of understanding what is happening.

PART 2. ENFORCEMENT IN CROSS-BORDER CASES

2A. Enforcement of return orders issued under the 1980 Hague Convention, and after 1 March 2005, Regulation 2201/2003

1. Legal bases for enforcement.

In your reply, please take into account the issues discussed in the questionnaire of the Hague Conference, at p. 2, under I. 1- 4 as set out hereunder. In case your member state has already responded to the Hague Conference's questionnaire, you would mainly have to update and if you think necessary, add lacking information. In case your member state has not responded to the Hague Conference's questionnaire, we suggest that you would try to cover the issues mentioned in that questionnaire in a general manner. It also seems advisable to contact the ministry that ought to have responded to the questionnaire, to see whether they still intend to do so or could provide you with a draft.

LEGAL BASIS FOR THE ENFORCEMENT OF RETURN ORDERS

1. Please give details of any specific legislative provisions which exist in your State concerning the enforcement of return orders. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.

The 1980 Hague Convention and the Regulation 2201/2003 settle the enforcement of return orders. The Hague Convention was ratified in 1994 by the ordinary law No. 64 dated 15th January 1994.

The law of ratification, which rendered enforceable the European Convention on the Recognition of the Enforcement of Judgments concerning the Custody of Children and the Restoration of Custody, signed at Luxembourg dated 20th May 1980, contains few provisions to activate the two conventions and also the Convention regarding the protec-

tion of minors, validated by the signature of the Hague on 5th October 1961, and the Convention concerning the repatriation of minors, validated by the signature of the Hague on 28th May 1970.

With regard to the activation of the 1980 Hague Convention, the law identifies the Ministry of Justice (The Department of Justice for Children) as the Central Authority, namely the competent body to intervene to identify and enable the repatriation of children illicitly taken abroad, authorizing them to take advantage of collaboration, representation and the assistance of the State Legal Profession, as well as the Children's Services for the administration of Justice and the assistance of the bodies of the Public Administration and the State Police. The legislative act states that the Juvenile Court, as the judicial entity able to recognize and enforce our directions for proceedings brought by a Foreign Authority, is able to involve the State Prosecutor in the Juvenile Court local to the child. The law of ratification then provides for the time limit (of 30 days) within which the Tribunal, facing a dispute, must rule in judgment, having heard from the person holding the child, the Public Prosecutor, and the child him/herself.

With regard to the adoption of the community regulations of 2201/2003 which substituted the preceding regulation 1347/2000, we must state that the immediate enforceability of the regulations has not required any legislative provisions for their application into the Italian legal system; in fact indeed to today there have been no other provisions which contain arrangements to activate the regulations.

In respect of their relationship with the Hague Convention 1980 we highlight that the latter continues to be applicable in all cases where the international abduction concerned is outside the European community, whilst in the European community it has been integrated by art 11 of the regulations which has had the effect of extending legal guardianship to all minors of 18 years of age.

With regard to the present situation we can refer only to the existence of a ministerial circular (Circular of the Minister for Internal Affairs No 24 dated 23rd June 2006) which nonetheless considers exclusively the clarifications necessary to proceed to the transcription of the regulations in the dissolution of the marriage.

2. Please give details of any general legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions.

It is the general principle of the rules that the way the process is carried out, also when there are foreign aspects to consider or a connection with other regulations, is still to be determined by the *lex fori*, that is by the law of the state in which the proceedings take place (art. 12. L. 31st May 1995 N.218). Such a law has, in effect, reformed the Italian system of private international rights by laying down the ambit of Italian jurisdiction, putting forward criteria for singling out the right applicable and determining the efficacy of the sentence and the foreign acts.

Since in the Italian provisions specific rules for the enforcement of decisions relating to the family do not exist, we must apply the general arrangements found in Book III of the Civil Procedure Code as well as the rules of the Civil Code (Book I).

We must nonetheless clarify that international regulations and/or community regulations prevail over domestic rights by their specific nature and/or superior origin. It follows that the Hague Convention 1980 and the regulations 2201/2003 differ in the application of the general rules in terms of enforcement of foreign proceedings relating to children.

3. Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions).

Only a legislative act can set out provisions for the enforcement of return orders because of their statement power. There are no practice directives or guides concerning the enforcement of court orders in the area of family law. The State Prosecutor in the competent Court is engaged in the enforcement of the Juvenile Court's decisions as a figure able to enforce, and he acts when the need arises.

We must state, among other things, that all decisions on the enforcement of the regulations relating to minors would, under the Italian rules, have persuasive effect, there not being a precedent making them binding and, in such an area, rendering them strictly legally binding to the specific circumstances of the concrete case.

We must simply make further reference to the presence of the Practical Guide for the application of the new Rules Bruxelles II, of 1st June 2005, drawn up by the Services of the Commission in consultation with the European Judicial Network in civil and commercial law, which, notwithstanding its binding effect, only has the function of facilitating the application of the Regulation 2201/2003, providing advice on the common interpretation of the community rules.

4. Do you have any other comments relating to the law governing enforcement of return orders, including any comments on the effectiveness of these rules?

We can say that the enforcement procedure is very efficient and the provisions for enforcement of return orders have always been effective.

Also the time limits for enforcing proceedings and the possible repatriation of the child are very contained and facilitate a swift effective solution to ensure the best guardianship of the child.

We must say that having a community regulation substantially referring to the application of the Hague Convention in enforcing the return order, the domestic Central Authority acts according to the methods prescribed by the law ratifying the convention; details are not however available regarding the enforcement of the return order for judgments in the requesting country after a refusal by the Juvenile Court.

2. Procedure and practice with regard to return orders

In your reply, please take into account the issues discussed in the questionnaire of the Hague Conference, p. 3-4, under III.A-D as set out hereunder. In case your member state has already responded to the Hague Conference's questionnaire,

you would mainly have to update and if you think necessary, add lacking information. In case your member state has not responded to the Hague Conference's questionnaire, we suggest that you would try to cover the issues mentioned in that questionnaire in a general manner.

Please consider whether the replies to the Hague questionnaire refer in any way to the use of mediation as a tool to settle an abduction case and whether this plays a role in actual practice.

III. ENFORCEMENT PROCEDURE

A. The order to be enforced and the aims of enforcement

1. If an application for return of a child is successful, what is normally ordered:

- a) the surrender of the child to the applicant (if necessary, "for the purposes of returning the child to his / her State of habitual residence")**
- b) the return of the child to State X**
- c) other?**

The aim of enforcement is to guarantee the return of the child to the state in which he/she was residing before the abduction. The 1980 Hague Convention in effect provides a quick and immediate means to propose a remedy to the illegitimate residence of a minor in a state, in order to reconstruct the situation as it was prior to the abduction.

Such an aim is reinforced with the adoption of the community regulations which have limited the exceptions for the refusal of the return order. The child in fact must always be repatriated even when there is danger to the child whether it be a question of physical or psychological damage or a return to an intolerable situation, but the state of origin has in place means to protect the child.

2. If such order has to be enforced, please specify which of the following is / are normally the aim of enforcing a return order:

- a) to remove the child from the abductor or any other person**
- b) to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place**
- c) to ensure the child's return to his or her State of habitual residence**
- d) other.**

The aim of enforcing a return order is to ensure the child's return to his or her State of habitual residence. Therefore in reality the most frequent method of arranging the enforcement is the delivery of the child to the applicant parent when they are physically in Italian territory, which is aimed at facilitating the repatriation.

3. Whose responsibility is it to organise the repatriation of the child?

The State Prosecutor in the Juvenile Court which has ordered the return of the child, must arrange the material transfer of the child, even making use of the Children's Services of the Department for the Administration of Justice, and the State Police, with immediate notification to the Central Authority.

B. Actors involved in enforcement

1. Once a return order is made, is a specific request for enforcement necessary? If yes, which authority is responsible and which procedure applies?

No, it is not. The ratification act of The Hague Convention refers to the State Prosecutor of the competent Court for the enforcement of the return order.

2. Please specify who initiates enforcement of the court's return order:

- a) the applicant (in person or through his or her lawyer)**
- b) the Central Authority**
- c) the court**
- d) the enforcement organ itself**
- e) other.**

It is the enforcement figure itself, that is the State Prosecutor in the competent Court.

Where the law leaves choices or discretion, please give details concerning actual practice.

The identification of the competent body for the enforcement of the return order is set out by the law ratifying the 1980 Hague Convention, so that the possibility of another choice is not admissible.

There is nonetheless a certain discretion for the competent organ over the means of the actual enforcement, in such a way as to make the procedure for the return order flexible. This guarantees the promptness and protects the interests of the child in the actual case.

3. a) Please give details of the persons, organs and institutions (e.g. enforcement organs, court, parties, psychologists, social workers, Central Authorities, other) involved in the enforcement of return orders

- i) according to the law**
- ii) in practice.**

The law for applying the convention distinguishes the case in which the party proceeds directly to institute proceedings for the repatriation, from that in which the Central Authority is involved. In the latter case the State Prosecutor in the Juvenile Court has the obligation to support action for the return of the child; in the other case the party proceeds autonomously to institute legal proceedings in which the Public Prosecutor necessarily has to intervene.

Under the law, the Public Prosecutor in the competent Court can involve, in the enforcement of the return order, Social Services, the Central Authorities and the Police.

Although the ratifying law permits the Public Prosecutor to take advantage of the collaboration of all entities whose aims correspond with the Convention, in practical application we rarely encounter the involvement of different organisms from those specifically listed. In practice the involvement of medical staff is facilitated, and medical services in general, when, from the judicial stage onwards, it becomes necessary for the Tribunal to evaluate the physical condition of the child.

Please describe their respective roles and functions in enforcement, and whether their participation is

mandatory. If this is not the case for some or all of the actors mentioned, please specify who decides about their respective participation and to what extent they are normally involved in return cases (regularly or exceptionally and, in the latter case, depending on which conditions).

The Public Prosecutor in the competent Court, whose intervention is mandatory, can involve the cited institution when their intervention is required because of the difficulties of enforcement or when it is required to ensure the child's welfare. Their involvement is not mandatory.

In the case in which the applicant parent started proceedings through the Central Authority, he/she will have the right to be informed about the date of the hearing at the Juvenile Court and to appear (at his/her own cost) to be heard.

Furthermore it is provided that during the proceedings also the parent who has taken the child illegitimately can be heard.

The act of hearing from the child has been set out by the ratifying law and is left to the discretion of the judge.

With regard to the power of the Juvenile Court, we must state that the regulations have expressly devolved to the Tribunal, in addition to those provisions already laid down by the law ratifying the Hague Convention, the function of investigating the existence of rules for the protection of the child in the state of origin.

The State Prosecutor is the figure who promotes and also intervenes in the proceedings in the Juvenile Court, and must be heard in the course of the judgment as he represents the body which collaborates with the judge in order to guarantee the guardianship of the child; he is responsible in practice for the enforcement of the repatriation of the child, involving if necessary the police forces and social services. The generic functions of the Public Prosecutor are listed in art. 73 and ss. of the Judicial Rules (Royal Decree 30th January 1941 No.12) and in the law which today has reorganized the Public Prosecutor by legislative Decree dated 20th February 2006 No.106.

The intervention of the State Police, solely at the enforcement stage, is a continuing tool and is indispensable in cases in which difficulties arise in the actual handing over of the child by the subject who has illegitimately taken the child. At each office of the State Police there is a special section dedicated to children comprising inspectors (men and women) professionally trained in having contact with children.

The role of such an organ is important to the judicial handling in the preliminary phase when it focuses on the child and attempts to find an amicable solution to the dispute. The special Children's Office at each Police Headquarters, composed of staff specializing in children's issues, encourages the parent (the defendant in the return order proceedings) to hand over the child, demonstrating the consequences of an illegal act and the repercussions on the psychological-physical well-being of the child.

The Central Authority plays a role of vigilance over the whole proceedings and takes action in cases in which it is necessary to identify the place where the child is domiciled; it invites the national and international police forces and Interpol to make enquiries abroad when necessary. It is responsible for maintaining contact with the appropriate central authority of the state requesting repatriation to which must communicate the outcome of the proceedings brought in the Juvenile Court; it must cooperate with the foreign authority in the requesting state when assists the Italian citizen in the request to return the child.

The authority is the entity carrying the organisational system charged with the recovery of rights conferred on the legal guardian and the person with visiting rights; it is able to make use of the cooperation of the State Police, the legal profession of the State, the Public Administration, and the entities which correspond with the functions granted derived from the Convention.

Such an organ is thus bestowed with autonomous powers of initiative and decision-making: in advance it must evaluate the existence of grounds for applying the Hague Convention and can refuse to become involved when there are no grounds on which to proceed, declaring its inability to act; possibly refers to the corresponding authority of the state in which the child is residing; it declares the language of the proceedings for the repatriation. Furthermore the Authority assists in the selection of necessary measures and in ensuring the voluntary handover of the child prior to and during the legal proceedings; it can likewise adopt precautionary measures such as withdrawal of the child's passport and that of the person with custody of the child. It is the national organ which organizes the intervention of social services and promotes the cooperation between state and local social service and needs of the each part involved in the enforcement procedure.

The community regulations confer considerable operational freedom on the central Authority, delegating important powers in order to facilitate legal cooperation and links between the jurisdictions. Its role in the search for agreed solutions has been motivated by the need to facilitate contact between the parents and to promote mediation as a conciliatory tool.

b) In particular, are any social or psychological services available in order to prepare the child and / or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures?

The State Prosecutor in the competent Court can involve Social services in all national territories.

It is the State Prosecutor in the competent Court that requires their participation in offering assistance to the children and the applicant parent (or in some cases to the respondent parent, if necessary). Their function is to avoid all psychological trauma.

In addition to the facts set out in part A, we must explain that the Department of Social Services for Children (Uffici di Servizio Sociale per i Minorenni , or “USSM”, such as service that depends on the Ministry of Justice) puts into effect the directions under the Hague Convention of 25th October 1980, and provides, furthermore, the planning for cases concurring with the implementation of the decisions of the Judicial Authority for Children. Such services provide, moreover, knowledgeable elements concerning the minor and planning for cases concurring with the implementation of the decisions of the Judicial Authority for Children. They provide support and maintain control in all phases of the proceedings of the Judicial Authority, in favour of the minor.

The normal reference has already been indicated and must be integrated with that expressly set out in the following: Law 16 July 1962 n. 1085; Decree of the Republic President 22 September 1988 n. 448, Legislative Decree of 28th July 1989 No. 272, Circular No 72676 of 16th May 1996 “Organization and Technical Management of the USSM”, Circular No 5351 of 17th February 2006 “Organization and Technical Management of the Social Services Department for Children” and the “Services Chart”.

The presence of the different professions in the domestic Department for Children’s Services permits the state to guarantee diverse skills, to maintain uniformity in an educational context, and to evaluate the role of Case Management. The skills of the USSM are not limited only to the areas of intervention in international child abduction cases, but also extend to all cases in which a child is involved, above all in criminal matters; but we are most interested in the management, coordination and intervention functions. The relevant functions are those which concern the promotion and consolidation of a system of communication and collaboration with the Technical Services of the Children’s Centre for Justice, the Local Health Authorities, and the Social and Health Services in general.

The offices therefore organize the activity of consultation on the procedures, checking the results and evaluating the efficiency and adequacy of the Service.

The area of intervention is the central focus for implementing the politics of the legal protection of the child, and also enacting the prevention and recovery through multi-dimensional means, involving the contexts and institutions referred to. It is a matter of developing and carrying out specific projects, using strategies to connect the other Services of the Administration of Justice for Children with public and private social services, and also experimenting with operative models.

c) Please specify also whether the presence of the applicant (or a person designated by him or her) is required and, if this is the case, at which stage of the enforcement proceedings and for what purpose.

The presence of the applicant is not obligatory.

He is obliged to cooperate with the Central Authority in locating the child; with the aim of facilitating the search he must indicate the location of the person who may have the child and respond to all relevant questions regarding the same as well as offering

documentation confirming the custody and visiting rights. He can be heard in the course of the proceedings with the purpose of supplying relevant information and also indicating his own reasons for the proceedings.

He can facilitate the enforcement of the return order when it is necessary to permit the child to return.

The regulations set out an increasingly important participation of the applicant in that he/she must be compulsorily heard in order to issue a direction refusing the return order

4. a) Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other State authority? If a court is supervising / controlling the enforcement procedure, which court is it? The court that made the order or other (e.g. a specific enforcement court)?

The State Prosecutor in the competent Court has the power to enforce and control the proceedings. He must advise the Central Authority when proceedings are instituted.

b) What if the court of first instance refused return, and the appellate court or court of appeals ordered return? Would the court of first instance, the appellate court or court of appeals which ordered return, or any other court be the court supervising / controlling enforcement in such a case?

An appeal against the Order of the Juvenile Court can be made to the Court of Cassation. Such a Court nonetheless cannot directly order the repatriation, but can only annul the previous decision of the Court of First Instance. The Supreme Court thus has to transfer the file to the Juvenile Court so that it can provide a new decision which takes into account the express position of the superior court and/or the enforcement of the order.

C. The actual enforcement procedure
1. Is there a timeline for enforcement?

No, there isn't, but all provisions concerning the return orders are deemed urgent procedures.

The urgency is required to respect the aims of the convention and therefore restore, in the interests of the child, his/her previous situation with his/her immediate re-entry into the state in which he/she usually resides. On the other hand the important element is time in order to obtain a good outcome in the proceedings: the return of the child can be refused if the child is already integrated into his/her new environment.

2. Is it normal to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made?

It is possible to allow a period of voluntary compliance if the respondent parent makes the request and the applicant parent agrees. We can say that this situation is not common.

In order to reach an agreement, regulation 2201/2003 invites the Central Authority to intervene proposing mediation before and during the enforcement procedure.

3. Are any measures available in order to prevent the abductor from taking the child into hiding after the return order is made and before it can be enforced? In the affirmative, please give details.

In order to prevent the child's abduction the State Prosecutor can order the temporary settlement of the child in a public institution, or he can allow the child to be placed in the care of social services.

4. What happens if the child is taken into hiding after the order was made and before it can be enforced? Which actors would be involved (e.g. Central Authority, police, public prosecutor, other) and which measures can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?

The State Prosecutor in the competent Court arranges the search for the child by the national police department or Interpol for foreign investigation. The abduction does not affect the enforcement procedure because there is no time limit to respect.

5. When enforcement is initiated, what are the required steps (e.g. measures by the applicant, the court or any other supervisory authority, and the enforcement organs)?

As we have specified, the State Prosecutor is engaged in the urgent enforcement of the court decision. He can take all the appropriate measures he considers to be necessary.

6. Which coercive measures are available and under what conditions (e.g. pecuniary fines, physical force [against whom? the child? the defendant? others?], detention)? Which of these are normally used in practice?

The ratification law does not provide for any coercive measures. It is only possible to request the participation of the police force.

We must emphasize that in fact the law for implementing the convention does not make express recall to the domestic rules regarding enforcement, thus regarding its rules and regulations as exhaustive. We can consider, however, that being a matter of rules relating to private international rights, the lack of provision can be covered by domestic legislation, provided that the instruments for domestic rights do not contradict the aims of the convention. From this viewpoint the rules will be applied in the way we have already seen, in order to enforce domestic proceedings as if compatible.

7. a) Do they have to be ordered specifically (i.e. either "fine", "physical force", "detention")? If so, when and by whom?

It is possible to enforce detention or other punishment only when the parent commits a criminal offence under Italian law.

b) If problems occur during enforcement, may the enforcement organs unilaterally “up-grade” the intensity of coercive measures, or do they have to obtain authorisation from any particular higher authority (e.g. an enforcement court or other)? Please specify.

It is not provided.

8. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained after hours and ex parte?

All directions concerning the return order are considered as an emergency can be decided without the participation of legal representation, if it appears necessary.

In relation to custody, in the urgent interests of the child the ratifying law imposes on the Tribunal the issuing of a decision within 30 days of the request for directions.

We must state that the dispute of the decision of the Juvenile Court does not suspend the enforceable effect of the proceedings.

D. Costs

1. Are costs incurred for the enforcement? If so, are they part of the costs of the court proceedings as a whole? How are they calculated? For which services are they charged?

Judicial actions are exempt from the usual fees and registration as well as from every other expense and right.

The Central Authority bears all of the costs of the proceedings which may be necessary (including the judicial fees and legal representation fees, except for the application of the rules regarding free legal assistance). The judicial authority can require the abducting parent to pay the costs incurred. However the travel costs of the child are always the responsibility of both parties

2. Who has to pay the costs for enforcement? To whom? Is a reduction or exemption possible, e.g. under a Legal Aid Scheme? Under which conditions? In particular, is advance payment required in order for the enforcement organs to act? If legal aid was granted for the proceedings leading to the return order, would it cover the enforcement stage or would the application for legal aid have to be renewed?

The applicant parent who decides to appear at the hearing fixed by the Juvenile Court can participate, but he/she is forced to bear any costs in doing so (such as travel and accommodation costs).

The Italian Constitution guarantees the possibility of an assessment of their rights to everyone – whatever the nature of those rights – in the legal process, in so far as it is an inviolable right and everyone may take action in the judgment in guarding their own rights (art. 24 Constitution). In this way the domestic regulations ensure individuals without resources have the means to act and defend themselves in every jurisdiction.

The decree of the President of the Republic No 115 of 30.5.2002 has completely reorganized the area of legal representation to the expense of the State, identifying the proceedings in which someone can ask for legal assistance from a lawyer without incurring any cost; these provisions are applicable in civil law proceedings in general, as well as the proceedings of “voluntary jurisdiction” (separation, divorce, proceedings regarding the family and the conditions of the person – prohibitions, lack of fitness) and enforcement of proceedings.

The introduction of free legal assistance pertains to every phase and level of proceedings, and it can be requested at any time, before the start or during proceedings and its effect runs from the request for the same.

A condition for the access to free legal assistance is that the applicant remains no well-being throughout the proceedings. To qualify a person must earn no more than €9,296.22 (a sum updated every two years under ISTAT).

The request must be presented to the local branch of the Council of the Order of Lawyers (“Consiglio dell’Ordine degli Avvocati”) in the area in which the case is registered in the Tribunal; within ten days of the presentation of the request a decision is made. If the party is granted assistance he/she can nominate a legal representative from a choice of those registered on the Roll as providing representation funded by the State. This information is available locally at each branch of the Council of the Order of Lawyers, where assistance is also available and forms are held to be completed to make the formal request.

Free legal assistance is also provided to foreign citizens with residence permits, children, and also stateless persons, even if not resident.

With reference to the member states, the Legislative Decree dated 27th May 2005 No 116 extends to community citizens access to free assistance for the party domiciled or regularly resident in the territory of a European Union member state different from that in which the proceedings are taking place and in which enforcement will occur.

The free assistance guarantees both legal advice in the pre-contentious phase, in order to facilitate reaching a solution prior to commencing proceedings, and also legal assistance and representation at the process. The free assistance exonerates the applicant from court fees, including any interpreting and translation costs, and travel costs of those required to attend the hearing under the normal rules or by the judge of the member State, as well as the costs of those required to attend the meeting by the judge during the proceedings.

The free assistance does not cover the costs incurred by the opposing party if the assisted party loses the case and the judge pronounces a sentence against the assisted person to reimburse the costs incurred by the other party.

The request for free legal assistance for foreigners must be presented to the competent authority of the European Union member state in which he is domiciled or regularly resides, or the competent authority of the State where the proceedings are pending or in which the decision must be enforced.

The authority to transmit or receive an order in the national territory rests with the Minister of Justice who will forward it to the appropriate branch of the Council of the Order of Lawyers for the decision.

3. Are the costs of the actual repatriation of the child (e.g. airfare for child and possible accompanying person) considered as part of the enforcement costs? Who has to pay for the repatriation? Is advance

payment a condition for enforcement?

No, they aren't. The applicant has to pay the repatriation costs unless the abductor agrees to do so or he himself arranges the repatriation of the child.

4. Please specify how foreign applicants are provided with information about enforcement costs to be borne by them.

All information about enforcement (and the cost) are given by Central Authority.

5. Please provide details regarding the enforcement organs' specific duties as they relate to the enforcement of Hague return orders concerning children.

When the procedure is activated through the Central Authority, it evaluates first of all the existence of presumptions set down by law to facilitate execution, and in doing so uses its discretion.

In cases in which there are conditions to proceed, the Public Prosecutor asks the Juvenile Court to reinstate and return the visiting rights. The President of the Tribunal, considering the case, fixes the hearing in Chambers, which is attended by the Public Prosecutor, the parents, and the child, if considered appropriate. The final decision must be enforced by the public Prosecutor, collaborating with the aforementioned institutions.

If the party autonomously takes steps towards the action before the competent Tribunal, the participation of the Public Prosecutor will still however be necessary.

Although not expressly provided for by the law ratifying the Convention, recent legal thinking considers that the Tribunal, which is not invested with the matter of custody, can still issue urgent and interim directions in the interests of the child. Such a necessity in effect indicates that when repatriation is refused, it is indispensable that the permanent position of the child in the State guarantees its psycho-physical well-being and does not translate into a situation of abandonment (Cass. civ. S.U., 23rd February 2001, No. 71).

6. Do you have any other comments relating to the enforcement procedure?

The enforcement procedure has always functioned in an excellent way.

We must, nonetheless, state that a limited divergence exists between the convention as originally conceived and the ratifying law, relating to hearing from the child in the proceedings for repatriation or reviewing visiting rights. Such a fact becomes important if the child opposes the repatriation and has reached an age and maturity at which one must consider his wishes, when it may constitute a reason to refuse the return order. In the ratifying law, hearing the child's wishes is only a possibility and is left to the discretion of the Tribunal.

We can conclude that on the basis of the decisions mentioned, generally a child between 9-15 years of age will be heard, thus excluding very young children. Furthermore the view of the child is taken into consideration in proportional relation to his/her age, so that the older child's wishes are taken more into account. The choice of the Italian legislature has therefore been to guarantee, as happens in exclusively domestic cases, a certain discretion to the judge to enable an evaluation of the opportunity to hear from the child in each

single case in order to avoid trauma or the conditioning of the child (cfr. Cass civ. 15th November 1997 No 11328 in Giust sic. Mass, 1997, 2183).

The possibility of hearing the child's wishes is expressly sanctioned by Regulation 2201/2003 which makes listening to the child a general rule, except if the result may be against the child's interests.

3. Enforceability and legal remedies of return orders

See the questions hereunder, taken from the questionnaire of the Hague Conference, under II. In case your member state has already responded to the Hague Conference's questionnaire, you would mainly have to update and if you think necessary, add lacking information. In case your member state has not responded to the Hague Conference's questionnaire, we suggest that you would try to cover the issues mentioned in that questionnaire in a general manner.

II ENFORCEABILITY AND LEGAL REMEDIES

1. a) Is a return order subject to appeal or other forms of challenge? Please give details (number and character of legal remedies, possible time-limit for them, possible time-limit for appellate court or court of appeals to decide etc.).

The only way to contest the return order is by an appeal to the Court of Cassation within 60 days of service of the order.

We must state that the above-mentioned recourse is a means to dispute, under the Italian regulations, exclusively errors regarding the rights contained in the contested proceedings. In fact the Court of Cassation is the supreme body which oversees the exact and uniform interpretation of the law. It is therefore necessary for the applicant party to show a violation or false interpretation of the rules and the omission, or insufficient or contradictory motivation in an essential point of the dispute.

The court, following the hearing, can then quash the decision and refer the case to the competent judge to carry out the judgement, specifying the principle which the reversing judge will have to follow; he can reject the appeal without referring the matter back to the appropriate court if there are no reasons for the annulment of the decision; he can quash the decision when, not having to ascertain facts, he can resolve the issue in question.

b) Please specify whether any such challenge may only be made once, and which court or body has jurisdiction to hear the appeal.

The Supreme Court has jurisdiction to hear the appeal, which is permitted only once.

2. a) Please give details of any authorisation or other decision required for the actual enforcement of the Hague return order (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or other).

There are no authorisations or other decisions required because the procedure aims to simplify and speed up the return of the child.

b) Which is the competent organ for these decisions?

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3. Does the Hague return order have to be final and no longer subject to ordinary appeal before any authorisation for enforcement or other measure specified under II.2 may be ordered?

No. The Juvenile Court's decision is always immediately executive without any time limit, even if the abductor parent appeals to the Supreme Court, because that process does not suspend the enforcement.

4. a) Are any of the decisions specified under II.2.a) (authorisation to enforce or other decision) subject to appeal independent of any appeal against the merits of the return order? Please give details (number and character of legal remedies, possible timelimit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.).

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b) Please specify whether any such challenge may only be made once, whether it suspends the enforceability / enforcement of the order and which is the court or body to decide the appeal.

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5. If in your State both types of legal remedy as specified under II.1 and II.4 (i.e. against the order on the merits and against any decision taken at or required for the enforcement stage) exist, can they be lodged simultaneously? Is it the same court that deals with them if they are lodged (a) simultaneously, and (b) at different times?

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6. Do you have any other comments relating to legal remedies and the enforcement of return orders?

As previously stated, the community regulations expressly recall the Hague Convention relating to the repatriation procedure for the child, imposing on the member state the rapid handling of the request, using the most accelerated domestic procedures. In this context it is therefore considered possible to adopt the same procedure intended by the ratifying law of the Hague Convention which, as indicated above, defers the power over the decision and the enforcement of the order to the Juvenile Court and the Public Prosecutor, thus simultaneously guaranteeing the quickest possible advancement of the case by the body specialising in children's issues. This is also true for the return order *ex. art. 11* of the Regulations; as the repatriation that follows the decision of the competent judicial authority deciding the merits of the case successively to proceedings refusing the return, should take place with the use of domestic executive instruments. However we are not in a position to supply concrete statistics due to the lack of such cases.

To date it has been possible to enforce visiting rights due to the certification which renders the proceedings automatically enforceable, thus using an even faster procedure than that anticipated by the Hague Convention.

2B. Law and practice with regard to enforcement of family law judgments other than return orders

In this part, ‘other family law decisions’ are family law decisions (as defined above), with the exclusion of orders on the return of the child, which should be discussed in Part 2. Notably these judgments may relate to the custody, the place of residence of the child, to orders supporting these judgments and judgments relating to contact or access. We assume that contact and access orders will in most cases be enforced on the basis of the Hague Abduction Convention or on the basis of the particular provision of Brussels 2A (Article 41), but it cannot be excluded that they are enforced on the basis of ‘ordinary’ rules.

1. Instruments and national legislation relevant for the enforcement of family judgments in cross-border cases

Apart from the Brussels 2A regulation (see question 2 hereunder) and the Hague Abduction Convention (discussed in Part 2) your member state may be party to other international convention relevant of the enforcement of family law judgments (e.g. the Hague 1961 and 1996 Conventions on protection of children or regional conventions). Please list these conventions. Please indicate any legislation implementing or supporting the application of these conventions. In case no international instrument is applicable, please indicate whether there is legislation or case law relevant for the enforcement of foreign family law judgments?

Italy is signatory to the following international agreements:

- The Convention on the Protection of Children signed by the Hague on 5th October 1961, ratified by the Law of 24th October 1980 No.742 but entered into force only on 22nd April 1995.
- The European Convention on the Repatriation of Children signed by the Hague on 28th May 1970, ratified by the Law of 30th June 1975 No.396;
- The Luxembourg Convention of 28th May 1980 ratified by the Law of 15th January 1994 No.64 and entered into force on 1st May 1995.

These conventions together with that of the Hague of 1980 have been activated by the same law namely that of 15th January 1994, No. 64.

We must add furthermore that there is a bilateral agreement with the Government of the Lebanese Republic dealing with cooperation in matters relating to the family, dated 15 July 2004 and brought into force on 1st June 2005. The agreement sets up a mixed consultative Commission whose function is to ascertain and coordinate issues concerning citizens of minority age in the two states. The Commission has the task of utilising every possible method of conciliation between parents to facilitate visiting rights and the exercise of custody arrangements, as well as intervening in proceedings for the return of the minor illicitly taken from his/her country of residence.

The European Convention on the Exercise of the Rights of Minors adopted by the Hague on 11th September 1995 and signed by Italy on 26th January 1996 has not yet been ratified into our rules.

Italy has signed up to, but not yet brought into force, the Hague Convention of 19th October 1996, which concerns the jurisdiction, the applicable law, the recognition and

execution of judgments, as well as the cooperation in the areas of parental responsibility and the protection of children.

Also the Convention of the Council of Europe opened by signature on 15th May 2003 on personal relationships regarding minors has not yet been brought into force.

In respect of the enforcement of proceedings of a financial nature relating to minors, we can cite:

- The Convention on the Payment of Alimony Abroad signed in New York on 20th June 1956 brought into force by the Law of 23rd March 1958 No.383, which indicated the Minister for Internal Affairs as the intermediary organism for the guardianship of the right of maintenance; this authority has an administrative capacity to promote the alimony and oversee the enforcement adopting the necessary measures to ensure and assure the payment of alimony.

- The Hague Convention of 2nd October 1973 ratified and brought into force by the Law of 24th October 1980 No. 745, which concerns the recognition and enforcement of proceedings relating to alimony obligations;

- The Convention of Rome of 6th November 1990 on the simplification of the procedures relating to the recovery of maintenance payments between member States of the European Community and brought into force with the Law of 23rd December 1992 No.524. This designates a central authority to ensure cooperation in order to facilitate the collection of maintenance payments deriving from any sentence, act or transaction. The authority in effect receives the request, locates the debtor, and carries out enforcement measures in the other state.

It is then useful to highlight that Italy has signed the Convention of New York on the Rights of Minors of 20th November 1989 ratified by the Law of 27th May 1991 No. 176, as well as the European Convention on the Exercise of the Rights of Minors signed in Strasbourg on 25th January 1996 and ratified by the Law of 20th March No 77.

2. National law relevant for cross-border enforcement of family law judgments under Brussels 2A

In Part 1A you will already have set out the national system for enforcement of family law judgments in internal cases. Are there any specific legal provisions (or case law) relevant for enforcement in cross-border cases, and specifically under Brussels 2A? If necessary, please distinguish between situations where a decision emanating from your member state is to be enforced abroad and where a decision emanating from another member state is to be enforced in your member state.

Each time the effects of a provision laid down by a foreign authority must be recognized in order to proceed to the execution of the decision within the domestic system, it is necessary to apply the rules of civil international rights laid down by the Law of 31st May 1995 No. 218 or, alternatively, the special rules governing specific conventions.

Under the general rules the Italian system, before enforcing foreign orders not voluntarily carried out, requires a verification that the requirements exist to legally recognize the decision.

In family matters, art. 64-67 of Law 31st May 1995 No 218 states that the Court of Appeal is the forum in which the decision must be enforced, to assess the following condi-

tions: existence of jurisdiction of the foreign judge, respect of the right to a defence, respect for public order. At the end of such a procedure the foreign provision can be adopted into our system; the enforcement will be based on the domestic rules already illustrated at sub.1A

Each time the international Conventions or community rules deal with the enforcement of family decisions, the international instruments stated, having special character, prevail on the application of the domestic general rules, as illustrated above.

The 1961 Hague Convention regards, in general, the protection of the child. First of all it establishes the competence of the Juvenile Court in the place of residence of the child to issue urgent directions; it declares the jurisdiction of the Court in the place where the provision must be executed for non-urgent actions. The enforcement of the foreign judgment is referred to the Tutelary judge in the place in which the child resides. Proceedings can be started by the State Prosecutor, the Central Authority, or by the applicant itself.

The 1980 Luxembourg Convention regards the recognition and the execution of the provisions regarding parental responsibility and visiting rights laid down in another contracting state. The existence of a decision declared enforceable in the state of the claimant, and a subsequent breach, provide conditions for enforcement of the provision. The enforcement procedure is similar to that of the 1980 Hague Convention: the involvement of the Central Authority is organized, the competence of the Juvenile Court is declared, and the intervention of the State Prosecutor is enacted to ensure the enforcement occurs.

As to the application of the Regulations 2201/2003, the enforcement has to be actioned under the general rules of the domestic legislation, but the decision must previously be recognized in the state that must enforce the decision.

Avoiding the procedure of *exequatur* (the procedure actioned in the Court of Appeal in the place in which the provision must be carried out is necessary for all decisions differing from the repatriation order as a result of abduction and the visitation order) the judge, upon the request of a party, supplies the sentence of a certificate that attests to the respect of all the procedural guarantees adopted in the course of the procedure and also contains the necessary information for the enforcement (for example the place in which the child lives, method of exercising the visiting rights, the parties' details); such conditions permit the immediate enforcement of the decision.

3. National practice with regard to the enforcement of family law decision of your own courts in another member state

In case the courts in your member state take a decision that is to be enforced in another member state, will the courts take the 'cross-border' factor into account.

E.g. will the court consider:

- whether orders that support enforcement are practicable (or not) in the member state where enforcement is to take place (e.g. involvement of police authorities, which may not be practicable in all member states in case of enforcement of, e.g., visiting rights)

- any other practical factors regarding the enforcement that ensue from the fact that the enforcement takes place in a cross-border situation, such as the involvement of foreign child protection agencies, the taking into account of different society customs and practices in the other member state, or the practical difficulties encountered by the child and interested persons (mostly parents) when family

rights such as custody or visiting rights are to be respected in a cross-border situation.

When an the Italian judge has to make provisions about the child in the cross border family he has to verify that the action has been commenced correctly regarding the jurisdiction and the form of summons to the defendant.

After those preliminary checks he has to identify the rules to apply to the concrete case from national, community or foreign regulations. As a judgment is made on the merits, the domestic or foreign systems are considered to confirm that the foreign provisions are not contrary to the constitution and the public interests.

There are no rules or judicial practices which permit the judge, in the assessment on the merits, to extend his jurisdiction to the enforcement aspects; such a phase is possible later as it is linked to the non-fulfilment. Beyond the cases the international conventions laid down, the detailed rules for carrying out the order and the enforcement of the provisions abroad follows the domestic rules of the legal system in which enforcement is sought.

The only aspect that can influence the provision being carried out is the merits of the case.

For example the execution of the decision in a foreign country can constitute an important element in how visitation rights are organised. The judge must indicate, unless the parents have reached an agreement, the best conditions to assure the child maintains a relationship with both parents.

The judge's decision can affect the methods of enforcement when facts exist suggesting elements of danger to the child, making the attendance of the social services or other agencies instructed necessary in order to control the exercise of the visiting rights.

4. National practice with regard to the enforcement of family law decisions of another member state in your own member state.

When a family law judgment from another member state is to be enforced in another member state, will the courts be inclined to amend the modalities of such a decision, e.g. with regard to the measures supporting enforcement (involvement of the police) or the practicality of the arrangements laid down by the foreign court.

As already stated, the execution of foreign decisions within our rules must be carried out, unless there is a dispensation, applying the domestic legislative system laid down in the civil procedure code as illustrated in the first part.

That means the possibility of modifying the stated directions is closely based on the type of enforcement adopted, such as the supporting measures like the involvement of public forces which is generally permitted within our system.

It has been said that, outside of the cases in which decisions are automatically recognised, the sentences are subordinate to the procedure of verification of the conditions indicated above, before the formal start of the enforcement procedure. We have to add that, although it is not expressly stated, the execution of the provisions concerning the child requires verification of the effective protection of the child's welfare; a principle of constitutional importance. The breach of such a guarantee prevents the enforcement of the decision.

5. Setting aside or amending of foreign judgments

Is it possible to indicate what conditions must be fulfilled before a decision of another member state, which is to be recognised and enforced in your member state, may be set aside by a ‘new’ decision of your own courts? E.g. a divorce court in another member state has taken measures with respect to parental responsibility and visiting rights. The child then comes to live in your member state. After a certain period an interested party challenges the arrangements made by the divorce court, whereas another interested party pleads for enforcement of these arrangements.

The power of the judicial authority to modify a foreign judgment concerning the child can be exercised if two conditions exist: a change of circumstances which leads to Italian jurisdiction, and the change of the situation of the child, justifying the variation of the judgment for the protection of the primary interests of the child.

We can find the criteria for identifying jurisdiction and the applicable law in civil international law, in the international conventions or in the community regulations that, specifically, prevail over general dispositions.

The national law regarding the child represents the general criterion to identify the domestic law applicable to the relationships between parents and offspring. However it is superseded by the national law of the State where the child or his/her parent has fixed their residence under the Regulations 2201/2003.

On the other hand the same Regulation 2201/2003 provides for the faculty not to enforce the child order when the circumstances are changed and the passing of the time makes the decision unfair to the child.

We have to remind of the existence of some dispositions (ex . 1961 Hague Convention) which allow the intervention of internal judicial authority where it is necessary to solve urgent needs of the child; in these cases the national judge can modify the foreign decision to assure the child welfare.

Outside the Regulations and the conventions indicated above, the competent state to protect the child in a specific situation (for example abduction) can be based on the separation or divorce issue; it concerns the national law common to the husband and wife as well, or the state law where the marriage existed.

It is obvious, therefore, that in the last hypotheses the change of jurisdiction is often impossible to achieve, with the consequence that the adoption of a modification provision on the position of the child is inhibited.

We must highlight nonetheless the possibility that the parties can deviate from the authority of the judge resulting from the above-mentioned rules and validly assign jurisdiction to the domestic court.

It is finally possible that the appeal commenced in the domestic jurisdiction, lacking jurisdiction based on the rules indicated, remains validly instituted in cases in which the parties do not contest jurisdiction within the time limit for doing so.

2C. Specific issues relating to the cross-border enforcement of family law judgments

1. The role of organs and institutions

What national organs and institutions are involved in the cross-border enforcement of family law judgements (both when enforcement takes place in your member state or ‘abroad’ (in another member state or in a third state). We assume that to an extent such organs have already been discussed above under B.1 a-c, above, but it may be necessary to include particular details.

With reference to the role developed by the Central Authority in the matter of jurisdiction assigned by the Hague Convention and the Regulations or other international Conventions, we can refer back to the matters previously described.

When the child is abducted by the citizen of a non member State or a State which hasn’t signed the Hague Convention or other already specified international Conventions, the Ministry of Foreign Affairs and the Diplomatic and Consular Representations will have to intervene in the proceedings to stabilize the legal situation. Such organisms serve to activate the contacts with the competent Local Authorities, they support the actions of the Police Authority in order to search for the child, and when it is possible they try to reach a settlement between the parties. They also organize consular visits.

In particular, under No 34 of the Presidential Decree of 5 January 1967 No. 200, the Consul can exercise all the functions generally attributed to the Tutelary Judge. However if the child has dual citizenship the function of the Tutelary Judge is limited by the foreign State which declares the exclusive jurisdiction over the child’s protection.

Those organisms cannot involve the local court to enforce a national provision; such a faculty obviously is left to the applicant and this procedure requires the application of the internal rules and its executive procedures.

2. Time limits relevant for enforcement proceedings and the effect of time

To an extent these issues will have been discussed under B. 2 a-c above and there may not be any specific different rule or practice. We are inclined to assume that in cross-border cases certain time limits (e.g. for appeal) are similar to those in internal cases, as discussed in under B. above, or are subject to foreign law (if the decision emanates from another state. However, in cross-border cases, possibly certain time limits may influence enforcement, whether it is the enforcement of a ‘foreign’ decision or the enforcement abroad of a decision from your Member State. Finally the passing of time may have a different effect on enforceability in cross-border cases.

As regards the internal decisions and the decisions under the Hague Convention and regulation, the time limits to contest the judgment, and to enforce them, are already set out at A.

As to the decision made by a foreign authority, the domestic rules must be observed.

We can underline that the Hague Convention 1961, 1970 and the 1970 Luxembourg Convention provide for a procedure similar to the 1980 Hague Convention; the appeal must be lodged in the Supreme Court within 60 days from notice of the decision.

3. Coercive measures to ensure enforcement

Again reference may probably be made to paragraph B. 3. a-c above. Please include any issue relevant to a cross-border case.

There are no specific rules other than those as set out at B. 3. a-c.

4. Other legal or practical conditions that may form obstacles to enforcement

Again reference may probably be made to paragraph B. 4 above. Please include any issue relevant to a cross-border case.

The obstacles to the enforcement of the provisions come from the necessity to verify that all conditions exist, as already illustrated, in order to approve the start of the enforcement procedure.

Moreover, the enforcement of the judgment is prevented if it is revealed to be contrary to the interests of the minor; we refer to the aforementioned rule reported in international conventions set out at B.1 and however used by the judicial body in resolving the case.

In particular, the 1980 Luxembourg Convention prevents the enforcement of the foreign decision when the effects of the provision are incompatible with the fundamental principles that regulate family law and children in the state in question, when a substantial change of the conditions makes the decision unfair for the child, or when the statement contrasts with a decision of a domestic court.

The enforcement can be suspended if the decision has been contested, if a judicial appeal has been proposed in the requesting state before the beginning of the enforcement procedure or if the enforcement of another judgment is already in progress.

The 1970 Hague convention, equally, refuses enforcement when the judgment is contrary to the public interest, when the judgment must be enforced for the parent who, under international law, has no parental responsibility over the child, when it is contrary to the child's interests, or when the child has citizenship in the requesting state or the requesting state denies the competence of the required state.

5. Issues of specific concern in cross-border cases

The issues of specific concern may vary from Member State to Member State and may very well be specific for you jurisdiction. Possible issues that may (or may not be discussed are, e.g.:

- Are rights granted under certain family law judgments (decisions on parental responsibility or on access/contact rights) limited in a geographical sense (e.g. the territory on one member state) or are they absolute (e.g. the right may be exercised world-wide).

All family judgments determine absolute rights without any geographical restriction; however the general effectiveness can be limited by domestic law or international conventions which restrict the enforcement or allow enforcement based on a specific condition.

As for the Italian system we have explained at sub B.

- Is it necessary to obtain permission of a court to move to another member state without the consent of another holder of parental responsibility? Under what do the courts give permission to relocate?

When both parents have parental responsibility, every choice must be made jointly, including the place where the child will live. A change of residence is impossible without the consent of the other parent.

We have said that the expatriation of the child is allowed when he obtains a valid passport or identity card to reside continuously in a country; this needs both parents' consent.

However, a parent can appeal to the Tutelary Judge to get authorization to leave the country; a married parent can also appeal to the ordinary court to modify the conditions of separation or divorce and obtain the right to move abroad.

The court has the difficult task of balancing the constitutional right to settle the residence anywhere and the parental right to maintain contact with his child. It is evident that the transfer to a foreign state may make the relationship and the exercise of visiting rights difficult. The judge is endowed with a vast discretionary power that operates in the moral and economic interests of the child. We can list many decisions which imposed the duty to live in the habitual resident country when it appeared necessary to ensure the welfare of the child. (Cass. Civ. 25 May 1983 No. 3637 in Giust. Civ. Mass. 1983, 1285; Cass. Civ. 23 October 1971 No. 2986 in Giust. Civ. Mass. 1971, 1609).

We have to underline that consent is always required; the parent without parental responsibility has to authorize the issue of the valid passport and identity card to leave the country.

- Are there specific issues that arise when enforcing foreign family judgements
- Are there specific conditions with respect to foreign family judgements that may form obstacles to enforcement

There are no specific issues arising in relation to enforcement of foreign judgments or the obstacles to enforcement other than those as set out in this section.

- The influence of any bilateral or regional convention that is relevant for enforcement

There are neither bilateral nor regional conventions which are relevant for enforcement other than those listed.

6. Mediation/Alternative dispute resolution

Please discuss to what extent mediation (or alternative dispute resolution) plays a role in the enforcement of other family law decisions. What would or could be the legal base of such a solution and to what extent does it play a role in the practice of the courts. If mediation plays a role, is its use limited to 'internal' cases or is there also a use in cross-border cases.

We can conclude that in many cases couples turn to mediation at the suggestion of a judicial authority, or through their friends' or lawyer's advice. Mediation is never mandatory in the Italian legal system. It is used in all actions commenced in the domestic legal system.

Any agreement possibly reached by the opposing parties through mediation must be endorsed by a judicial judgment. If the proceeding was one of a contentious separation, the court will turn it into a consensual proceeding. At its end, the parties' arrangements will be ratified by the judge and will have legally binding effect.

Otherwise, if it is divorce proceedings, the successful mediation will transform it into a divorce on joint application, i.e. requested by both parties, and the agreement will become a part of the decree of the dissolution of the marriage issued by the court. In any case, when the partners have taken decisions about the children's custody or their maintenance, the court will take their directions into serious account.

Two approaches to mediation are common nowadays in Italy, both corresponding to different ideas of how a mediator should work: the Italian Society of Family Mediation, and the International Association of Systemic Mediators. This second school of thought aims at setting the quarrelling couple inside a relational system of relatives which also includes their respective parents and their children. This system is called "relational".

In many regions mediation is a public service, as for instance in Emilia Romagna where a regional law in 1989 set up 14 Centres for Families, 12 of which practice family mediation as part of their activities. Between 1995 and 2001 there have been about 2000 applications, 40% of which involved mediation. Half of the proceedings have been completed; 65% of the interviews involved both the partners and 35% involved only one of them. It appears that most of the couples included in this survey have been informed about and encouraged to go to mediation by other couples who had experienced it before, rather than by lawyers or judges.

The introduction of family law reform on separation and divorce aims to show the role of family mediation and to reach an agreement in the child's interests. Mediation is not mandatory yet, and the new legal system has not provided any form of professional control over the development of the procedure.

Unfortunately we cannot state its impact as we have no data on mediation after the reform as it has only been recently adopted.

NOTE ON THE EMPIRICAL STUDY

A. Statistical information

Appeal to the Central Authority Under the effect of Regulation (CE) 2201/2003 (1° march 2005 - 1° september 2006)

In the indicated period, the appeals submitted to the Central Authority are **10**; 5 cases actives* and 5 cases passives**. Four of them have been filed, six are still in progress.

The cases are divided:

N° 4 filed cases:

1 active* case about the recognition of the italian visit order in foreign system (filed for the agreement between the parties);

3 passives ** cases concerning the child repatriation (Only a case has been filed for the voluntary compliance; the agreement has determined the filed of the other case and the last appeal has been rejected).

N° 6 in progress:

4 actives cases are in progress for the recognition of an Italian decision. (An Ordinance of the Civil Court of Enna related to the right of visit; a provision of the Court of Appeal in Genoa on the right of visit; a decision of judicial separation and custody of the child by the Court in Vicenza; a decision of the Juvenile Court in Venice concerning the decadence of parental repsonsability).

2 passives cases ** (a case about the ricognition of italian decision relates to the visit right; another case concernes the judicial cooperation ex art. 56 Regulation).

Appeal to the Central Authority
Under the effect 1980 Hague Convention
(1° genuity 2000-31 december 2005)

Years	Visit right	Repatriation	Total
2000	41	100	141
2001	26	99	125
2002	26	94	120
2003	24	99	123
2004	32	98	130
2005	21	130	151
Total	170	620	790

Actives cases*.

Motives for filing	Filing phases					1.2 Total
	Ante-causa phases	Judge ment	Appeal	Enforce ment	in pro-gress	
Art.3 Hague Convention	2	39	3	11	0	55
Art.10 Hague Convention	0	0	0	1	0	1
Art.13 Hague Convention	1	30	9	0	0	40
Art.21 Hague Convention	2	0	0	0	0	2
Art.27 Hague Convention	0	1	0	0	0	1
Art.29 Hague Convention	2	1	0	0	0	3
Art.35 Hague Convention	3	0	0	0	0	3
Reached agreement	27	5	1	1	0	34
Child impossible to find	3	0	0	0	0	3
Inactivity of the parties	6	0	0	0	0	6
Death of the child	1	0	0	0	0	1
Child in transitu	4	0	0	0	0	4
Voluntary Repatriation	63	1	0	3	0	67
Abandon	49	0	1	0	0	50
Other	23	1	0	0	0	24
In progress	0	0	0	0	61	61
Total	186	78	14	16	61	355

Passives Cases**.

Motives for filing	Filing phases					1.3 Total
	Ante-causa phases	Judge ment	Appeal	Enforce ment	in pro-gress	
Art.3 Hague Convention	1	58	2	23	0	84
Art.13 Hague Convention	1	55	1	0	0	57
Art.21 Hague Convention	0	1	0	1	0	2
Art.35 Hague Convention	1	1	0	0	0	2
Reached agreement	3	2	0	1	0	6
Child impossible to find	10	0	0	0	0	10
Child in transitu	3	0	0	0	0	3
Voluntary Repatriation	49	2	0	1	0	52

Abandon	14	1	0	0	0	15
Other	9	4	0	0	0	13
In progress	0	0	0	0	21	21
Total	91	124	3	26	21	265

Time spending between the abduction and the appeal for repatriation	Cases		Total
	Actives	Passives	
<1 month	67	59	126
1-3 monthes	108	82	190
3-6 monthes	70	40	110
6-9 monthes	37	18	55
9-12 monthes	24	11	35
Beyond a 1 year	29	23	52
nr	20	32	52
Total	355	265	620

nr = we cannot stime the time because of the incertnity of the date of abduction.

Time spending between the appeal and the filed cases	Cases		Total
	Actives	Passives	
<1 month	27	29	56
1-3 monthes	49	90	139
3-6 monthes	76	81	157
6-9 monthes	55	28	83
9-12 monthes	25	8	33
12-18 monthes	35	5	40
18-24 monthes	13	2	15
Beyond 2 years	14	1	15
In progress	61	21	82
Total	355	265	620

Actives Cases*.

Central Authority re- quired	Nature of petition		Total
	Visit order	repatriation	
Argentina	2	5	7
Australia	3	9	12
Austria	4	6	10
Belgium	2	12	14
Brazil	2	10	12
Bulgaria	0	1	1
Canada	3	8	11
Chile	0	2	2
Colombia	1	8	9
Costa Rica	1	1	2
Croatia	0	1	1
Denmark	3	1	4
Ecuador	0	2	2
Finland	0	3	3
France	7	24	31
Germany	13	44	57
Greece	0	1	1
Ireland	2	2	4
Israel	0	5	5
Macedonia	0	2	2
Mexico	5	7	12
Moldova	1	0	1
Norway	1	0	1
Holland	4	15	19
Panama	1	1	2
Poland	6	28	34
Portugal	1	3	4
United Kingdom	9	26	35
Repubblica Czech	4	16	20
Romania	2	13	15
Serbia-Montenegro	0	2	2
Slovacchia	2	3	5
Slovenia	0	1	1
Spain	6	19	25
USA	17	46	63
SouthAfrica	2	1	3
Sweden	0	3	3
Switzerland	7	11	18
Turkey	1	2	3
Hungary	4	7	11
Uruguay	0	2	2
Venezuela	0	2	2
Total	116	355	471

Passives cases**.

Central Authority requiring	Nature of petition		1.4 Total
	Visit order	repatriation	
Argentina	5	22	27
Australia	1	6	7
Austria	1	2	3
Belgium	2	9	11
Brazil	0	2	2
Canada	5	4	9
Chile	1	0	1
Colombia	1	1	2
Croatia	0	1	1
Denmark	3	1	4
Ecuador	0	2	2
Estonia	0	1	1
Finland	0	3	3
France	6	22	28
Germany	3	51	54
Greece	0	2	2
Israel	1	2	3
Luxemburg	1	1	2
Mauritius	0	1	1
Mexico	1	2	3
Norway	0	3	3
Nuova Zelanda	1	0	1
Holland	0	8	8
Panama	0	2	2
Poland	2	10	12
Portugal	0	5	5
United Kingdom	2	23	25
Rep. Czech	1	1	2
Romania	4	3	7
Serbia-Montenegro	0	1	1
Slovacchia	0	3	3
Spain	1	8	9
USA	3	26	29
SouthAfrica	0	2	2
Sweden	0	5	5
Switzerland	5	21	26
Hungary	3	6	9
Uruguay	0	1	1

Venezuela	1	2	3
Total	54	265	319

*active cases: cases activated in a foreign state by italian central authority.

**passive cases: cases activated in Italy by the foreign Central Authority or foreign part.

**1980 Hague Convention
(child abduction 1 january- 30 june 2006)**

State involved	Cases		Total
	Attives*	Passives**	
Australia	1	-	1
Austria	1	1	2
Belgium	-	2	2
Bielorussia	-	1	1
Brazil	1	1	2
Chile	1	-	1
Colombia	1	1	2
Denmark	1	-	1
Ecuador	1	-	1
France	4	3	7
Germany	4	3	7
Macedonia	-	2	2
Mexico	1	1	2
Norway	-	1	1
Holland	-	1	1
Panama	1	-	1
Perù	1	-	1
Poland	6	-	6
United Kingdom	4	1	5
Rep. Czech	1	1	2
Romania	5	-	5
Slovacchia	2	2	4
Spain	2	3	5
USA	5	1	6
Switzerland	1	3	4
Hungary	2	-	2

TOTAL	46	28	74
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**1980 Hague Convention
(child abduction 1 january- 30 june 2005)**

State involved	Cases		Total
	Attives*	Passives**	
Argentina	1	5	6
Australia	-	1	1
Austria	1	-	1
Belgium	1	3	4
Brazil	1	-	1
Canada	1	-	1
Colombia	1	-	1
France	1	1	2
Germany	2	5	7
Great Britain	3	1	4
Ireland	1	-	1
Israel	1	1	2
Mauritius	-	1	1
Mexico	2	-	2
Holland	-	1	1
Poland	5	-	5
Rep. Czech	5	-	5
Romania	1	2	3
Slovacchia	1	-	1
Spain	4	1	5
USA	3	5	8
Switzerland	2	2	4
Hungary	2	-	2
TOTAL	39	29	68

1980 Hague Convention
(child abduction 1 january- 31 december 2005)

State involved	Cases		Total
	Attives*	Passives**	
Argentina	1	11	12
Australia	-	1	1
Austria	1	-	1
Belgium	1	3	4
Brazil	3	-	3
Bulgaria	1	-	1
Canada	1	1	2
Colombia	2	-	2
Estonia	-	1	1
Finland	1	-	1
France	6	5	11
Germany	6	8	14
Ireland	1	-	1
Israel	2	1	3
Macedonia	2	-	2
Mauritius	-	1	1
Mexico	3	1	4
Moldova	1	-	1
Norway	-	1	1
Holland	3	2	5
Panama	-	1	1
Poland	8	4	12
United Kingdom	7	5	12
Rep. Czech	7	-	7
Romania	6	4	10
Serbia Montenegro	1	-	1
Slovacchia	2	2	4
Spain	7	2	9
USA	5	6	11

Switzerland	4	4	8
Hungary	2	2	4
Uruguay	-	1	1
TOTAL	84	67	151

**1980 Hague Convention
(child abduction 1 january- 30 june 2004)**

State involved	Cases		Total
	Attives*	Passives**	
Argentina	-	2	2
Australia	3	-	3
Austria	1	-	1
Belgium	2	1	3
Brazil	2	-	2
Canada	-	1	1
Colombia	1	-	1
Croatia	-	1	1
Ecuador	2	-	2
Finland	1	-	1
France	-	2	2
Germany	4	2	6
Great Britain	5	3	8
Greece	1	1	2
Mexico	-	1	1
Norway	1	-	1
Holland	1	-	1
Panama	1	1	2
Poland	4	1	5
Romania	2	-	2
Serbia Montenegro	1	-	1
Slovenia	1	-	1
Spain	2	2	4
USA	3	1	4
Sweden	1	-	1
Switzerland	2	-	2
Venezuela	-	1	1
TOTAL	41	20	61

1980 Hague Convention
(child abduction 1 january- 30 december 2004)

State involved	Cases		Total
	Attives*	Passives**	
Argentina	1	6	7
Australia	3	-	3
Austria	2	-	2
Belgium	2	2	4
Brazil	2	-	2
Canada	2	2	4
Colombia	1	-	1
Croatia	1	1	2
Ecuador	2	-	2
Finland	2	-	2
France	1	4	5
Germany	7	6	13
Great Britain e Ireland del Nord	11	5	16
Greece	1	2	3
Ireland	1	-	1
Israel	1	-	1
Luxemburg	-	1	1

Mexico	1	1	2
Norway	1	-	1
Holland	4	-	4
Panama	1	1	2
Poland	6	3	9
Portugal	1	-	1
Repubblica Czech	3	-	3
Romania	3	1	4
Serbia Montenegro	1	1	2
Slovenia	1	-	1
Spain	8	5	13
USA	7	2	9
Sweden	1	-	1
Switzerland	3	2	5
Hungary	-	1	1
Uruguai	1	-	1
Venezuela	-	2	2
TOTAL	82	48	130

1980 Hague Convention
(child abduction 1 january- 31 december 2003)

State involved	Cases		Total
	Attives*	Passives**	
Argentina	2	3	5
Australia	2	3	5
Austria	1	-	1
Belgium	1	2	3
Brazil	3	1	4
Canada	2	2	4
Colombia	3	-	3
Costa Rica	2	-	2
Denmark	-	3	3
Finland	-	1	1
France	4	2	6
Germany	9	8	17
Great Britain e Ireland del Nord	3	4	7
Mexico	2	-	2
Norway	-	1	1
Holland	2	1	3
Poland	4	1	5

Portugal	1	2	3
Repubblica Czech	2	1	3
Romania	3	1	4
Slovacchia	1	-	1
Spain	3	1	4
USA	15	4	19
SouthAfrica	2	-	2
Sweden	2	-	2
Switzerland	2	9	11
Turkey	1	-	1
Uruguay	1	-	1
TOTAL	73	50	123

**1980 Hague Convention
(child abduction 1 january- 31 december 2002)**

State involved	casi trattati		
	<i>Total</i>	<i>Attives*</i>	<i>Passives**</i>
ARGENTINA	5	2	3
AUSTRALIA	1	1	0
AUSTRIA	3	2	1
BELGIUM	2	2	0
BRAZIL	4	3	1
CANADA	2	1	1
CHILE	1	0	1
COLOMBIA	1	1	0
DENMARK	3	2	1
FRANCE	10	4	6
GERMANY	25	15	10
ENGLAND	7	4	3
IRELAND NORTH	1	1	0

ISRAEL	1	0	1
HOLLAND	6	4	2
POLAND	9	9	0
PORTUGAL	2	0	2
REP.SLOVACCA	1	0	1
ROMANIA	1	0	1
SCOTLAND	1	1	0
SPAIN	2	2	0
USA	14	6	8
SOUTHAFRICA	3	1	2
SWEDEN	1	0	1
SWITZERLAND	8	3	5
TURKEY	1	1	0
HUNGARY	5	2	3
TOTAL	120	67	53

1 january- 31 december 2000

**1961 Hague Convention
(child protection)**

State involved	cases		
	<i>total</i>	<i>active</i> *	<i>passive</i> **
POLAND	1	1	0
SWITZERLAND	3	0	3
TOTAL	4	1	3

**1961 Hague Convention
(child protection 1 january- 30 june 2006)**

State involved	Cases		Total
	Attives*	Passives**	
Switzerland	-	1	1
TOTAL	-	1	1

**1961 Hague Convention
(child protection 1 january- 30 december 2005)**

State involved	Cases		Total
	Attives*	Passives**	
Switzerland	-	2	2
TOTAL	-	2	2

**1961 Hague Convention
(child protection 1 january- 30 june 2005)**

State involved	Cases		Total
	Attives*	Passives**	
Switzerland	-	1	1
TOTAL	-	1	1

**1961 Hague Convention
(child protection 1 january- 30 december 2004)**

State involved	Cases		Total
	Attives*	Passives**	
Belgium	1	-	1
Germany	2	-	2
Switzerland	-	2	2
TOTAL	3	2	5

**1961 Hague Convention
(child protection 1 january- 30 june 2004)**

State involved	Cases		Total
	Attives*	Passives**	
Belgium	1	-	1
Germany	2	-	2
Switzerland	-	1	1
TOTAL	3	1	4

**1961 Hague Convention
(child protection 1 january- 30 december 2003)**

State involved	Cases		Total
	Attives*	Passives**	
Austria	1	-	1
France	1	-	1
Poland	1	-	1
Switzerland	-	2	2
TOTAL	3	2	5

**1961 Hague Convention
(child protection 1 january- 30 december 2002)**

State involved	casi trattati		
	Total	Attives*	Passives**
FRANCE	1	1	0
GERMANY	1	0	1
SWITZERLAND	2	0	2
TOTAL	4	1	3

1961 Hague Convention

(child protection 1 january- 31 december 2001)

State involved	cases		
	total	actives *	passives **
GERMANY	1		1
TOTAL	1	0	1

1980 Luxemburg Convention

(custody restoration 1 january - 30 june 2006)

State involved	Cases		Total
	actives*	Passives**	
Switzerland	-	1	1
TOTAL	-	1	1

1980 Luxemburg Convention
(custody restoration 1 january - 31 december 2005)

State involved	Cases		Total
	Attives*	Passives**	
Spain	-	1	1
TOTAL	-	1	1

1980 Luxemburg Convention
(custody restoration 1 january - 31 december 2004)

State involved	Cases		Total
	Attives*	Passives**	
Belgium	1	-	1
Ireland	-	1	1
Rep. Czech	1	-	1
TOTAL	2	1	3

1980 Luxemburg Convention
(custody restoration 1 january - 31 december 2003)

State involved	Cases		Total
	Attives*	Passives**	
Belgium	1	-	1
Germany	1	-	1
Ireland	-	1	1
Switzerland	1	-	1
TOTAL	3	1	4

1980 Luxemburg Convention
(custody restoration 1 january - 31 december 2002)

State involved	casi trattati		
	<i>Total</i>	<i>Attives*</i>	<i>Passives**</i>
DENMARK	1	1	0
TOTAL	1	1	0

**1980 Luxemburg Convention
(custody restoration 1 january- 31 december 2001)**

State involved	cases		
	<i>total</i>	<i>actives</i> *	<i>passives</i> **
BELGIUM	1	1	
GERMANY	1		1
ENGLAND	1	1	
HOLLAND	1	1	
POLAND	1		1
SPAIN	1	1	
TOTAL	6	4	2

**1980 Luxemburg Convention
(custody restoration 1 january- 31 december 2000)**

State involved	cases		
	<i>total</i>	<i>actives</i> *	<i>passives</i> **
AUSTRIA	1	1	0
BELGIUM	1	1	0
FRANCE	1	0	1
GERMANY	2	2	0
INGHILTERRA	1	1	0
NORWAY	1	1	0
TOTAL	7	6	1

**Regulation CEE N. 2201/2003 (Bruxelles II bis)
(parental responsibility 1 january – 30 june 2006)**

State involved	Cases		Total
	<i>Attives*</i>	<i>Passives**</i>	

Poland	1	-	1
United Kingdom	2	-	2
TOTAL	3	-	3

Regulation CEE N. 2201/2003 (Bruxelles II bis)
(parental responsibility 1 january – 31 december 2005)

State involved	Cases		Total
	Attives*	Passives**	
France	-	1	1
Germany	-	2	2
TOTAL	-	3	3

Regulation CEE N. 2201/2003 (Bruxelles II bis)
(parental responsibility 1 january- 30 june 2005)

State involved	Cases		Total
	Attives*	Passives**	
France	-	1	1
Germany	-	2	2
TOTAL	-	3	3

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