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Comparative study on enforcement  
procedures of family rights

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Annex 22 National Report The Netherlands

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## The Netherlands.

### 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

1. Comments with respect to Dutch family law

Dutch family law divides authority for children (*'gezag'*) in parental authority (*'ouderlijk gezag'*) and custody (*'voogdij'*). There is parental authority when the person responsible for the child is a parent of the child. Custody (*'voogdij'*) exists when a third person (this may be a natural or a legal person), without a parental link to the child, is responsible for the child.

Parental authority (*'ouderlijk gezag'*) is usually exercised jointly by the two parents (mother and father) or by a single parent.

Parental responsibility requires being a parent. Under Dutch internal law the woman who gave birth to the child or who adopted the child is considered the mother. The man who was married to the mother at the time of birth is deemed to be the father (special rules apply in case of death or dissolution of marriage or legal separation during the period commencing 306 days before the birth). Fatherhood may further be asserted through recognition of the child or by court proceedings establishing his parentage. Parentage can also be established by adoption.

In some cases the authority for a child (the legislation considers this as a form of *'gezag'* (authority) which is equal to *'ouderlijk gezag'* (parental authority), not *'voogdij'* (custody)) is with the parent jointly with another who is not a parent. This situation arises by operation of law or on the basis of a court decision. The situation will arise by operation of law when at the time of birth the parent is married to, or has entered into a registered partnership with, someone who is not the parent of a child, while no-one else is parent of the child. Furthermore, in case the parental authority of the child is with one parent only, a court order may grant joint authority for the child to the parent and another natural person.

Custody usually requires a court decision. By will a parent with parental authority may appoint another natural person to be custodian over the child after his death. The surviving parent will retain parental authority.

Authority and custody end when the child becomes of age at 18 years. In some cases the end takes place before that date, when the child marries or enters into a registered partnership or through a court decision that declares the minor of age.

Parental authority of parents who are married exists by operation of law without a court decision being necessary (article 1:251(1) CC). This situation is not altered in case of divorce. The general rule, laid down in legislation, is that following a divorce parents will maintain joint parental authority over their children. A court decision to this effect is unnecessary. For the exception to the rule, authority is with one of the divorced parents only, a court decision is necessary (article 1:251(2) CC). The parents, or one of the parents may request to court to grant, in the interest of the child, parental authority to one of the parents only. Such a decision may also be granted by the court *ex officio* if the court learns from the child that is 12 years or older that it would appreciate to be under the parental authority of one parent only (article 1:251a CC). The court is deemed to be requested by one of the parents, or by the child, if the child is 12 years or older and is deemed to be capable of understanding its own interests.

In most cases parents will no longer live together after the divorce and the child will live in permanently with one of the parents. In such a case there is no need to grant visiting rights to

the parent with whom the child does not reside, as both parents have parental authority. However, the legislation does provide a solution in case there is a dispute on the exercise of visiting rights. The court may make an order for the exercise of visiting rights by the other parent.

For parents who are not married parental authority is exercised jointly on condition that an entry to that effect has been made into the 'Gezagsregister' at the request of both parents (see article 1:252 CC, which also gives limited grounds for the registrar to refuse making an entry). The 'Gezagsregister' (see article 1:244 CC) is a public registry maintained by each District Court and contains legal facts on the authority of minors. A decree (Besluit Gezagsregisters of 3 December 1997, Stb. 1997, 613) further regulates what data must be registered and how registration takes place.

In other circumstances the mother exercises parental authority on her own. See article 1:253b CC, when it is unknown who the father of the child is, or, when the father is known while parents are unmarried (and were never married) and do not exercise parental authority jointly, the mother will exercise parental authority on her own, unless she was unauthorised to do so at the time of birth. The circumstances under which the mother (or any parent) would be unauthorised to exercise parental authority are listed in article 1:246 CC. These circumstances relate to the legal capacity (parents must be of age (possibly through court decision) and adults who are placed under supervision ('curatele') are not authorised to be parents) or the mental capacity, which can be such that a person is unauthorised to be a parent.

The law assumes more or less that when the child is under parental authority, the child will live in with at least one parent with parental authority. Therefore a parent who has authority technically does not have separate visiting rights (cf. HR 24 juni 2005, NJ 2005, 415). In practice it will sometimes occur that a child lives in with a third person.

## **2. The general procedure for enforcement**

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

#### *a.1. the nature of decisions on parental authority or custody*

A judicial decision on authority or custody may take various forms. The nature of the judicial decision influences the enforcement of the decision. A decision may have the nature of granting joint parental authority to a parent and another person or of granting custody to non-parents. A decision may also end a situation where parental authority is exercised by both parents or by a parent and a non-parent and grant parental authority to one parent or to the non-parent who exercised parental authority together with a parent. A decision may also concern the way parental authority or custody is exercised. Furthermore a decision may limit parental authority or remove the parental authority completely.

In case parental authority is exercised jointly by the parents, parents may request a court decision in case of dispute (article 1:253a CC). The court may in such a case also make a decision on the place of residence of the child, without ending the joint parental authority (Netherlands Supreme Court, 2 February 1990, NJ 1990, 363 and 15 December 2000, NJ 2001, 123). The decision of 15 December 2000 further decided that a decision on the place of residence of the child may also be taken during the divorce proceedings. Again such a decision does not terminate the joint parental authority. As the judicial decision on the place of residence of the child does not terminate the joint parental authority, parents may still replace the judicial decision by their own decision, if they reach mutual agreement.

Under circumstances the child can be placed under supervision ('ondertoezichtstelling', often abbreviated as 'o.t.s.') of a family custody authority ('gezinsvoogdij-instelling' article 1:254 CC). Such a decision can be taken by the juvenile court at the request of a parent (even if the

parent does not have parental authority), the child protection agency or the public prosecutor (article 1:254(2) CC). The measure may be taken only in a situation that creates a serious risk for the child's health or the child's moral or mental interests and other measures to counter the situation have failed. The measure will take effect for the period of one year and can be extended always for yet another year. A parent with parental authority, the family custody authority or the child itself, when it is 12 years or older, may make a request to end the supervision. The family custody authority (and also the child protection agency and the public prosecutor) may make a request for being empowered to remove the child from the family home, and to place the child with e.g. grandparents, foster parents, but also, when the child is older in e.g., an 'internal labour relation'. The child could be engaged by, e.g., a family or a hospital or could man a sea-going vessel. The authority may also be empowered to place the child in a juvenile institute, which is a form of detention.

Ultimate steps that may be taken are to release a parent from his parental authority (article 1:266 CC, 'ontheffing ouderlijk gezag'), a measure used when the parent is unsuitable or unable to exercise parental authority. In exceptional circumstances, when the parent intentionally neglects his parental duties on purpose or is unworthy of exercising parental authority, parental authority may be removed by court order (article 1:269 CC, 'ontzetting ouderlijk gezag').

#### *a. 2. Enforcement procedures*

There are no general provisions on enforcement for 'family law decisions'. To an extent recourse may be had to the general rules on of judicial decisions. These are regulated in provisions of the Second Book of the Code of Civil Procedure (CCP), which deals with the judicial enforcement of judicial decisions. The general provisions typically deal with the enforcement of judgments concerning property, not human beings. With respect to the enforcement of family law judgments the provisions are relevant when the family law judgement is supported by an '*astreinte*' ('dwangsom')<sup>1</sup> or by detention ('lijfsdwang').

The '*astreinte*' ('dwangsom') is regulated by article 611a et seq. CCP)

Article 585 CCP makes coercion by detention is possible for non-money judgments and for judgements on maintenance. According to article 586 CCP coercion by detention may have been allowed directly by the decision that is to be enforced. If this is not the case, as it will be in most cases, the coercion by detention must be demanded in new summary proceedings ('kort geding'). Coercion by detention is only possible when the court finds that it can be expected that other methods will not work (article 587 CCP).

In addition to '*astreinte*' or coercion by detention, another method of enforcement is so-called 'reële executie' ('actual enforcement', article 299 Book 3 Civil Code).<sup>2</sup> This method of enforcement is usually applied with respect to property. However a note of the Minister of Justice mentions the possibility to use of this method possible in family law cases, on the condition that the method is not against the nature of the legal relationship in question.<sup>3</sup> Actual enforcement would implicate the use of police force. With respect to contact orders the use of police force has been allowed in one reported case (Hof Leeuwarden, 23 October 1985, Kort Geding 1986, 88). The prevailing view is however that the use of police force to induce contact between the child and the non-caring parent has a severe impact on the environment

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<sup>1</sup> An order supporting the principal order, which by nature does not concern the payment of money. Each time the principal order is not complied with a sum of money, as set by the ordering court, will fall due.

<sup>2</sup> See the Minister of Justice, December 2002, *Vaststelling van de begrotingsstaat van het Ministerie van Justitie (VI) voor het jaar 2003* (Budget Ministry of Justice 2003), TK (2002–2003), 28 600 VI, nr. 105, Bijlage, p. 2.

<sup>3</sup> See note 2.

of the child. The interest of non-caring parent would have to give way to the interest of the child. The possibility of the use of force would mainly serve as a deterrent.<sup>4</sup>

The use of coercion by detention in family law cases, especially when the coercion concerns the parent with whom the child resides, is also not seen as a very fitting solution. If a measure to promote enforcement is used in practice it will be the 'astreinte'. The other possible methods would in practice not lead to the desired effect and would also not serve the interest of the child.<sup>5</sup>

### *a.3. Special rules with respect to the enforcement of decisions on parental authority*

For the enforcement of decisions on parental authority, important special provisions can be found in the Third Book of the Code of Civil Procedure. The Sixth Title of that Book introduced in 1995, deals with procedure in cases of family law and the law of persons. The First Part of that Title (articles 798-813 CCP) deals with cases that are not divorce cases and mostly contains procedural rules.

An important provision for the enforcement of decisions on the exercise of authority over children (parental authority and custody) is Article 812 CCP. This provision provides that a judicial decision on authority *de iure* includes that the person to whom the care over the children concerned (whether this is on a permanent or a temporarily basis) always has the right that the children are handed over to him, if necessary with the use of the strong arm. It further follows from article 813(1)(c) CCP that if necessary the Public Prosecution Service will help with having children handed over in accordance with Article 812 CCP. Article 813(2) CCP entails that a police officer, instructed by the PPS to help in handing over the children, may enter any place or building necessary for this effect. Anyone having the care over a child may request the PPS for support in accordance with article 813 CCP. If the PPS would decline support, it is doubtful whether there is a legal remedy for

Article 812 CCP did away with the court practice existing before 1995, when the courts would have to hand down a decision that actually ordered that children were handed over and that use could be made of police intervention if necessary. This practice often increased tensions between the persons concerned.

Article 812 CCP always allows use of the 'strong arm' (the police) and as a consequence a court order no longer has to mention that police force may be used. The actual court order can remain silent on this aspect.

Article 812 CCP supports all decisions on the exercise authority of minors, and therefore will apply to decisions on parental authority and custody. Article 812 CCP further explicitly mentions decisions based on articles 1:253s, 1:261, 1:326 and 1:336a CC.

A decision based on article 1:253s CC concerns the situation where the parents have authority but the child has been living with others for more than a year as though the child was a family member of these others. The parents then need the approval of the others to change the place of residence of the child. If this is not given, the parents have to apply to the court to allow the change of residence. A decision based on article 1:336a CC relates to a situation comparable to article 1:253s CC, with the difference that the child was under custody while living with for more than one year with others who cared for the child.

A decision based on article 1:261 CC allows the family custody authority (FCA) to remove the child for the (family) home and place the child elsewhere. The court decision that allows the FCA to do so does not mention to whom the care is given. The FCA will remove the child and will decide to whom care will be given, a foster family or an institution. A decision based on article 1:326 CC entails that a child

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<sup>4</sup> See note 2.

<sup>5</sup> See the Minister of Justice, December 2002, *Vaststelling van de begrotingsstaat van het Ministerie van Justitie (VI) voor het jaar 2003* (Budget Ministry of Justice 2003), TK (2002–2003), 28 600 VI, nr. 105, p. 5.

that is under custody of a natural person is placed under supervision (see article 1:254 CC discussed above).

For the Dutch text of Articles 812 and 813 CCP see hereunder.

Article 812

Iedere beschikking betreffende de gezagsuitoefening over minderjarigen, de beschikkingen ingevolge de artikelen 253s, 261, 326 en 336a van Boek 1 van het Burgerlijk Wetboek daaronder begrepen, geeft degene aan wie deze minderjarigen ingevolge de beschikking tijdelijk of blijvend worden toevertrouwd, van rechtswege het recht tot het aan hem doen afgeven van deze minderjarigen, zonodig met behulp van de sterke arm.

Artikel 813

1. Het openbaar ministerie verleent zo nodig zijn medewerking:

- a. tot de voorgeleiding van een minderjarige voor de rechter ingevolge artikel 809 van dit Wetboek;
- b. tot de overbrenging van een minderjarige in verband met een uithuisplaatsing ingevolge de artikelen 261, en 326 van Boek 1 van het Burgerlijk Wetboek;
- c. tot de afgifte van minderjarigen, als bedoeld in artikel 812;
- d. tot de tenuitvoerlegging der beschikkingen, bedoeld in artikel 278, tweede lid, van Boek 1 van het Burgerlijk Wetboek.

2. De ambtenaar, aangesteld voor de uitvoering van de politietaak, die door het openbaar ministerie is aangewezen om de in lid 1 bedoelde medewerking te verlenen, heeft toegang tot elke plaats, voor zover dat redelijkerwijs voor de vervulling van zijn taak nodig is.

*a.4 Rules and practices developed with respect to contact orders*

In addition to the methods offered by the general provisions on enforcement of civil judgements ('astreinte' and coercion by detention) and the possible use of 'actual enforcement', legal practice has developed a number of options that are (sometimes) followed to induce adults in adhering to family law decisions, notably contact orders. These options,<sup>6</sup> developed in legal practice, can be summarized as follows:

1. Suspension of child maintenance. The courts have suspended the obligation to pay child maintenance in cases where it was expected that the parent caring for the child would not change his or her attitude (see, e.g. President District Court Rotterdam 14 April 1992, KG 1992, 188; President District Court Assen 27 May 1997, KG 1997, 204 and 314)
2. Reduction or refusal of the right to maintenance for the parent caring for the child. Under substantive law maintenance can be reduced in case of change of circumstances (article 1:401 Netherlands Civil Code (NL CC)). Behaviour of the caring parent that frustrates a contact arrangement may be considered as change of circumstances (see Justice of the Peace, Bergen op Zoom, PRG 1989, 3115).
3. Supervision. When the parent with parental authority ('gezag') totally frustrates contact between the child and the parent without parental authority this can be considered, under circumstances, as a situation that severely threatens the moral and mental interests of the child. This makes it possible to place the child under supervision (article 1:254 NL CC). See Supreme Court 13 April 2001, NJ 2002, 4 and 5. A decision to place a child under supervision for these reasons must be well motivated by the court.
4. Changing joint parental authority into single parent authority. If the parental relations after divorce are so severely disturbed that this risks that the children will become stuck or lost between the parents and there is no expectation that this situation will improve within a reasonable period of time, there is a possibility to bring changes in

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<sup>6</sup> The following overview is derived from comments by the Minister of Justice, in TK (2003-2004) 29 520 nr 6, p. 2-3.

the parental authority. See SC 10 December 1999, NJ 2000, 20. The mere fact that a visiting arrangement is not adhered to is not a valid reason for such a change.

5. Changing single authority into joint parental authority. A bill is currently making it possible to make this change possible on the request of one parent only (currently only both parents can request this change). If the bill becomes legislation, the minister of justice expects that the courts will grant such a measure under the circumstances set out under 4 above;
6. Change of the place of residence of the child. The courts may determine the place of residence of the child without ending the existing joint parental authority in case parents disagree on the place where the child should reside (SC 2 February 1990, NJ 1990, 363). The residence may also be determined by the courts during divorce proceedings as an ancillary measure, without ending the joint parental authority (SC 15 December 2000, NJ 2001, 123).

The methods developed in legal practice set out above are applied mostly when the protection of contact rights is at stake. The suggestion that the creation of a sanction in the Penal Code would be effective to enforce that contact arrangements are carried out was rejected by the Minister of Justice in December 2002. There was no clear need for a criminal sanction in view of the many civil sanctions available. A criminal sanction was also seen as an inappropriate measure for the issues that had to be confronted.<sup>7</sup>

#### a.5. Developments

Case law of the European Court for Human Rights caused the Minister of Justice to reconsider whether the Dutch government is fulfilling its duties under international law with respect to the taking of measures that render the exercise of visiting rights possible. This reconsideration led to the Minister of Justice to the following considerations.

- contact rights should not be considered as a right but as a duty and the law should be changed in order that parents are under a duty to have contact with their children, irrespective of their having joint parental responsibility or not. This measure should also help in effectuating contact arrangements or orders;
- people who wish to have contact with their children should receive help. In addition to improving the legal framework, private initiatives, local government and Juvenile Care organizations may help in assuring that contact is effectuated

The Minister of Justice considered that future legislation on divorce proceedings would require that the arrangements for contact would be set out in detail in the petition for divorce.<sup>8</sup> This should ensure that the arrangements would be respected by both parents and would offer a long-lasting solution. The intentions of the Minister of Justice led to a bill for the ‘Wet bevordering voortgezet ouderschap en zorgvuldige scheiding’ (Act to promote continuity of

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<sup>7</sup> *Vaststelling van de begrotingsstaat van het Ministerie van Justitie (VI) voor het jaar 2003* (Budget Ministry of Justice 2003), TK (2002–2003), 28 600 VI, nr. 105, p. 11.

<sup>8</sup> See TK (2003–2004), 29 520, nr. 6:

“Hiermee beoog ik te bevorderen dat de gemaakte afspraken in het kader van de echtscheiding een duurzaam karakter hebben en door beide partijen worden nagekomen. Concreet ben ik van plan het volgende te realiseren:

- Uit het verzoekschrift moet blijken over welke onderdelen van het verzoek overeenstemming is bereikt en waarover nog een verschil van mening bestaat;
- In het verzoekschrift worden afspraken over de invulling van het ouderlijk gezag opgenomen;
- Het opnemen van een wettelijke plicht tot omgang in het Burgerlijk wetboek. Deze plicht zal zowel van toepassing zijn op ouders die het gezamenlijk gezag uitoefenen als op ouders die dit niet doen.”

parenthood and careful divorce) which was introduced in Parliament in June 2005. This bill is discussed hereunder.

In addition to the steps considered by the Minister of Justice, reference should be made by measures considered by the state secretary for Health care, Welfare and Sport who made several suggestions to parliament in 2004 about steps that could be taken to improve the situation following a divorce. The state secretary thought of providing more information on the effects of divorce to children, parents and professionals and considered the introduction of a 'trusted person' ('vertrouwenspersoon') who would be concerned with the interests of the child only. The suggestion of a 'trusted person' has been developed in the bill for the Act to promote continuity of parenthood. Revision of the system for juvenile care has led to the new Act on Juvenile Care 2005 (Wet op de jeugdzorg), which develops a system for juvenile care that gives more responsibility to local authorities by the introduction of Bureaus Juvenile Care in all provinces and the three largest cities. On the Act on Juvenile Care and on the bill for an Act on continuity of parenthood, see hereunder.

#### *Comments with respect to practice*

With respect to practice, the most important development appears to be the use of specific orders which are not clearly regulated in legislation and which are set out above under 1.a.4. Shortcomings in practice, as seen by the government, are further addressed by the bill for an Act on continuity of parenthood. This bill is discussed hereunder.

#### *The bill for the Act on Continuity of parenthood*

The bill was introduced in June 2005 and is currently discussed in the Tweede Kamer (Second Chamber). After acceptance by the Tweede Kamer the approval of the Eerste Kamer (the 'senate') will be necessary before the bill may be enacted.

The bill requires that divorcing parent make an 'ouderschapsplan' (a plan on parenthood) that is appended to the petition for divorce. The plan must set out how parents following the divorce will deal with:

- tasks with respect to care and education of the child;
- informing one another of important issues with respect to the person and property of the children;
- the costs of care and education of the children.

The divorce petition should also set out how the children have been involved in the drafting of the plan.

Other changes proposed by the bill concern the concepts of parental authority and contact. The bill extends parental authority with the duty to improve the relation between the child and the other parent. This duty applies both in circumstances wherein parents have joint authority and circumstances wherein only one parent has parental authority. In case one of the parents does not have parental authority, the bill proposes that this parent is under a duty to have contact with the child. With respect to this duty (of the parent) the ministerial explanation to the bill considers that coercive measures are possible. It also follows from this that agreements on care and education of the child must be respected. If such agreements are not respected, coercive measures can be taken by the courts, or the court may make adjustments in parental authority. The bill also expands the definition of the right to contact. According to the bill the right to contact not only exists in relation between the child and the parents but also in relation between the child and 'others with whom the child stands in a close relation' (amendment of article 377 Book 1 CC).

In procedural law, the bill gives more opportunity to appoint a 'bijzonder curator' (special guardian) in proceedings that directly implicate a minor. The appointment of a 'bijzonder curator' can now only be made by the 'kantonrechter' (the 'justice of the peace', a single judge previously sitting in an independent court, now but sitting in a special section of the District Court). The bill extends this power to all courts and thus will enable the divorce court (which is the District Court) to appoint a special guardian in pending divorce proceedings. The idea is that the special guardian can help the parents in making the 'parenthood plan', if they are unable to reach agreement by themselves. This assistance by the special guardian may take place in mediation. Appointment of a special guardian can also improve the procedural position of the child in divorce proceedings. The special guardian may also aid the child in requesting an arrangement on the exercise of parental authority on its own motion or in making a request that only one of the parents is granted parental authority. The background of the bill is the observation that divorcing spouses are increasingly aware of the need to make firm arrangements at the time of divorce. This trend is clear with respect to the financial aspects of the divorce. Parents should also be more aware of the need for long-lasting arrangements with respect to the authority over children. In principle the trend is in favour of divorces that take place on the basis of mutual understanding. Thus, in more than 50% of cases (52.1% in 2003) divorces are now commenced by a joint petition of spouses. Furthermore in 2003, after the divorce in 92% of the divorces parents would jointly exercise parental authority over the children. In 1997 this happened only in 34% of all divorce cases. The bill aims to support this trend. Parents should be aware of the problems they have to solve at an early stage of divorce proceedings. The Minister of Justice further explained that in two areas initiatives would be developed to better confront cases wherein the parents would (initially) not be able to come to an agreement. Initiatives with respect to mediation and to youth care should support and further the effect of the bill. With respect to mediation the Minister of Justice has made reference to several future measures to encourage mediation. These measures would consist of information provision and a more adequate individual referral to mediation by the courts and by other legal service providers. Measures would also be taken to help parties with limited financial capacities to cover the costs of the mediation process. With respect to youth care, children and parents confronted with divorce and contact problems should be able to make use of youth care facilities. In case of minor problems local youth care agencies run by the municipalities could offer help. In case of major problems the youth care run at the provincial level could be involved. The two initiatives taken with respect to mediation and youth care could according to the Minister of Justice not be seen distinct from the bill, although the bill mainly deals with changes in the Civil Code and the Code of Civil Procedure.

## **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**

In the Dutch legal system the law regulates a number of organs that have a function in youth protection. Functions for youth assistance and protection are divided between various organs. The responsibility for Juvenile Care and protection is divided between the Bureau Juvenile Care ('Bureau Jeugdzorg') and the Child Protection Board ('Raad voor de Kinderbescherming'). The Bureau Juvenile Care functions as the organ for 'first-line help', and can only be accessed directly by the public. The Child Protection Board functions as 'second-line help' and can only be involved upon request of a designated group of organisations (amongst which the Bureau Juvenile Care, the police and the courts), but not by the public.

With respect to enforcement of family law decisions in cross-border situations there is a specific role for the Dutch Central Authority. On the basis of his general function in enforcement of civil law decisions, the ‘gerechtsdeurwaarder’ (‘bailiff’) can be involved in the enforcement of family law decisions as well. Furthermore, specific roles attributed by legislation mean that the police can also be involved in the enforcement of a family law decisions.

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

1. the Bureau Juvenile Care (‘Bureau Jeugdzorg’) is regulated by the Act on Juvenile Care (also referred to in governmental text in English as Act on Youth Care, ‘Wet op de jeugdzorg’, Act of 22 April 2004, Stb. 2004, 306, entry into force 1 January 2005).

Under the Act on Juvenile Care the Bureau Juvenile Care (BJC) is the gateway to Juvenile Care. Primarily the BJC becomes involved when youths have serious problems with regard to their education or upbringing. BJCs have been installed in all 12 ‘Provinces’ of the Netherlands. In addition there are also BJCs in the three largest cities of the Netherlands, Amsterdam, The Hague and Rotterdam. The provinces receive government funding which is passed on to a foundation (‘stichting’), which in each province maintains the Bureau Juvenile Care. For this reason the legislation refers to ‘the foundation that maintains a BJC’ and not of the ‘BJC’ (see the definition in article 1(1)f of the Act on Youth Care to which other legislation, e.g. the Civil Code, always refers).

The Bureau Juvenile Care has to provide access to juvenile care and has several functions. The BJC functions as a gateway to juvenile care and provides care if a juvenile (described as a ‘client’) meets the criteria for government supported juvenile care. One of the functions of the BJC is to carry out youth protection measures that have been granted. The BJC also has tasks in other areas, such as rehabilitation of juvenile delinquents and to provide access to mental health care or support to handicapped children.

Although the funding of the BJC is delegated to the provinces, the responsible ministries for the Act on Youth Care are the Ministry of Health, Welfare and Sport and the Ministry of Justice. More general information on the distribution of responsibilities between these ministries with respect to youth care can be found in the factsheet ‘Youth Policy in the Netherlands’ in the Annex of this report.

2. The Child Protection Board (CPB)

The CPB is part of the Netherlands Ministry of Justice and is a so-called second-line organisation which will only take action at the request of, primarily the BJC, the police or a court. The CPB cannot be accessed directly by the public. The CPB can be involved when child protection (within the family) is at issue. The CPB can also be involved in connection to divorce proceedings and more particular in connection to visitation arrangements after a divorce. For a more comprehensive description of the functions of the CPB (in English), reference is made to the information sheet ‘About the Child Protection Board’ in the Annex.

The tasks of the CPB are described in formal legislation only. Scattered through the Netherlands legislation tasks are given to the CPB. This is discussed in some more detail hereunder.

3. The Inspection on Youth Care

The Inspection on Youth Care (regulated by articles 47 et. seq. YCA) has to monitor the youth care organised on the basis of the Act on Juvenile Care (in particular the Bureaus Juvenile Care). The inspection also has to monitor the quality of the services of other organs

involved in youth care, such as the BJs, but also of the CPB. The inspection may on the basis of their monitoring make suggestions to improve the quality of the service.

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)

### 1. CPB

Of the organisations active in juvenile care, the organisation with the most prominent procedural role would be the Child Protection Board.

There is no coherent, single statute or act regulating the tasks of the CPB. In the course of time, tasks of the CPB have been increased by new legislation for special issues. Its activities are consequently regulated by provisions in several acts. Its role in youth correction (criminal cases) will not be discussed in this report. The role of the Child Protection Board in civil cases is chiefly described in article 1:238-1:243 Civil Code. According to article 1:239 CC the CPB can act on behalf of minors who have their domicile ('woonplaats') or their last domicile or the place of actual residence in the Netherlands. The CPB can also act on behalf of minors with Dutch nationality who do not have domicile, or last domicile, or actual residence in the Netherlands. The CPB is organised in 'work units' and in principal a minor will be assisted by a work unit that is active in the district ('arrondissement') where the minor has domicile or actual resides (art. 1:239(2) CC). For minors who do not have (last) domicile or actual residence in the Netherlands, the work units in Amsterdam will be involved (art. 1:239(4) CC).

The CPB can ask for a court order on authority when the CPB finds out that a minor is not under any authority ('gezag') or when such authority is not exercised properly (article 1:241 CC). Furthermore the CPB is expected to be inform itself of all cases wherein measures with respect to the authority of a minor are considered (article 1:242 CC). In order to ascertain that the CPB receives information, the law imposes a duty to inform on legal entities that act as custodian (the 'rechtspersoon-voogd', see article 1:305 CC and 1:328 (2) CC) and on the Justice of the Peace ('kantonrechter', these judges are now integrated in the District Courts known as District Court 'sectie Kanton').

Sometimes the CPB will initiate proceedings on its own motion. The action of the CPB will then be based on one of many individual statutory provisions. Many of these can be found scattered through Book 1 of the Civil Code. In addition separate acts grant the right to institute court proceedings on its own motion. If the CPB is not acting on its own decision, the involvement of the CPB in family law proceedings will be the result of application of article 810 CCP. On the basis of this provision the CPB can always be involved in family law cases upon request of the judge hearing the case ('facultative involvement'). The involvement of the CPB by a judge is according to article 810 CCP mandatory in proceedings relating to supervision ('ondertoezichtstelling.') or on release of parental authority ('onthefing ouderlijk gezag'). It should be noted that the provision on the mandatory involvement of the CPB is less relevant in practice as in more than 95% of cases it will be the CPB that is requesting such measures. The CPB may further always give its own opinion on the case involving a minor. It is for this purpose that the CPB will always receive a copy of each request ('verzoekschrift') that concerns a minor. In addition to article 810 CCP, which appears to be written mainly for situations where legal proceedings are initiated by others than the CPB, various provisions attribute the right to the CPB to make a request to the court of its own motion. Thus, with respect to 'gezag', specific provisions of the Civil Code attribute the right to the CPB to institute proceedings.

The CPB can appear in court without representation by a lawyer ('advocaat') in proceedings initiated by 'verzoekschrift' ('non-contentious proceedings' proceedings that are not commenced by a writ of summons). In proceedings initiated by writ legal representation by a lawyer is necessary (article 1:243 (4) CC). Legislation further contains provisions on the cost of certain actions of the CPB. Thus extracts from the civil registries, necessary for the work of the CPB are provided free of cost (article 1:243(1) CC) and the CPB does not incur court fees in non-contentious proceedings (article 1:243 (2) CC).

#### Statistical information on the Child Protection Board's activities

<b>Main tasks (1)</b>	<b>1995</b>	<b>1997</b>	<b>2000</b>	<b>2002</b>	<b>2004</b>
youth protection	8 277	8 522	9 000	8 661	9 858
divorce and contact	3 731	3 598	4 175	4 009	3 928
other civil cases	1 813	2 279	2 275	2 836	2 443
Total civil cases	13 821	14 399	15 450	15 506	16 229
information/ research	8 005	13 934	20 000	24 452	28 005
youth correction	4 408	7 925	12 000	15 431	19 062
Total criminal cases	12 413	21 859	32 000	39 883	47 067

1. Zie jaarberichten Raad voor de kindbescherming. In de cijfers strafrechtelijk onderzoek zijn niet opgenomen vervolgonderzoeken (in 2004: 3078).

#### 2. The Bureau Juvenile Care

The Bureau Juvenile Care (always referred to by reference to 1(1)f AYC, as the 'foundation that takes care of the Bureau Juvenile Care') may act in court proceedings once certain measures with respect to authority ('gezag') are taken. The BJC can exercise custody or temporary custody and also exercises supervision when a child is placed under supervision (article 1:254 CC). The BJC cannot make a request with respect to custody or supervision. A request with respect to placing under supervision can be made by the CPB, the public prosecutor's office or by the parents (article 1:254 (4) CC). In practice the request will be brought by the CPB. But once the child is under supervision of the Bureau of Juvenile Care there may be circumstances wherein the BJC is party in proceedings in family law. This may be the case when the BJC requests extension of the period of supervision (article 1:256(2) CC). Another action the BJC can take while a child is under supervision and has been removed from the paternal home (article 1:263a CC) is to request that the contact between a parent and the child is limited. The BJC will then request the juvenile court to make a contact order for the duration of the period that the child is removed from the family home (article 1:263b CC).

#### 3. Child Abduction: The Central Authority

The Central Authority under the Hague Abduction Convention 1980 and the Luxembourg Convention 1980 is a service of the Ministry of Justice that is appointed on the basis of article 4 of the Act of 2 May 1990. Currently the 'Directie Justitiele Jeugdbeleid, afdeling Juridische

en Internationale Zaken' is the Central Authority under the two conventions and for cases that are outside the scope of an international convention. See Staatscourant 4 November 2004, nr 213, page 22.

According to article 5(1) of the Act of 2 May 1990 the Central Authority is authorised to act in and out of court on behalf of those who have contacted the Central Authority with a request relating to child abduction (under the conventions or otherwise). The Central Authority does not need to be represented by a lawyer ('advocaat') in court proceedings, unless the proceedings are commenced by writ ('dagvaarding') (article 5(2) of the Act of 2 May 1990). The Central Authority bears all the costs incurred by carrying out its statutory tasks, in so far as these can not be claimed from the person requesting assistance or the person responsible or jointly responsible for the international child abduction.

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

It could be noted that in non-contentious proceedings (commencing with a request ('verzoekschrift')) the CPB and the Central Authority can appear in court without representation by a lawyer. In family proceedings most proceedings are commenced by request. It is outside the scope of this report, but the traditional division that only proceedings commenced by writ are adversary and that proceedings commenced by request are not at all adversary by nature can no longer be maintained. Proceedings commencing by request may lead to an exchange of points of view between the interested parties. It should be noted that proceedings in child abduction cases before the Juvenile Court, e.g. proceedings for the return of the child, are commenced by request (see article 12 of the Act of 12 May 1990). It is however possible to initiate such proceedings differently, by proceedings in summary proceedings ('kort geding'), in which case a writ will be necessary to institute proceedings by writ. Article 12 of the Act of 12 May 1990 specifically mentions that the jurisdiction of the Juvenile Court does not limit the jurisdiction of the President of the District Court in summary proceedings.

In order to bring a case in summary proceedings, it would be necessary to demonstrate the need of an urgent measure. It is submitted that this need will exist in most child abduction cases. It appears that the Central Authority in practice will always commence proceedings before the Juvenile Court. In case law reported from 1991 no cases (out of 23 reported decisions) have been brought by the Central Authority in summary proceedings. The few reported abduction cases (9) rendered in summary proceedings were brought between individuals, mostly between parents.

## 2. Time limits relevant for enforcement proceedings

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

The time limit for appeal depends on the nature of the decision.

#### 1. Cases commenced by writ ('vonnissen' and 'arresten')

##### *Ordinary proceedings*

In case proceedings were commenced by writ the court decisions issued during these proceedings are known as 'vonnis' (in first instance) or as 'arrest' (in appeal or cassation). Provisions on the proceedings in first instance are found in Title 2 of the Code of Civil Procedure, provisions on proceedings in appeal (second instance) are found in Title 7 of the Code of Civil Procedure. Unless Title 7 provides otherwise, the provisions of Title 2 apply in appeal (article 353(1) CCP). For appeal against a decision in first instance, a 'vonnis' (which are rare in family law cases) the period for appeal is three months, commencing on the date of judgment (article 339(1) CCP). The period for cassation after a decision in second instance

(an ‘*arrest*’) is three months from the date of judgment (article 402 CCP). Appeal and cassation will mean that the effect of the judgment that is challenged is suspended, unless the judgment allowed preliminary enforcement (articles 350(1) CCP (appeal in second instance) and 404 CCP (cassation). Preliminary enforcement (‘*bij voorraad*’) can be allowed in first instance (articles 233-235 CCP) or in appeal (on the basis of article 353(1) CCP). In appeal the appeal court may suspend preliminary enforcement, if this was allowed by the court in first instance (article 351 CCP). The appeal court may also allow preliminary enforcement (article 360(2) CCP).

### *Summary proceedings*

For summary proceedings the period for appeal in first instance is limited to four weeks (article 339(2) CCP). As a consequence the period for cassation of a decision in second instance is set at twice the period for appeal, i.e. 8 weeks (article 402(2) CCP).

### 2. Cases commenced by petition (*beschikkingen* (‘decrees’))

If the proceedings were brought by ‘*verzoekschrift*’ (‘request’ or ‘petition’) court decision issued during these proceedings are known as ‘*beschikking*’ (hereafter ‘decree’) in all instances. For appeal of a court decree in first instance the period is three months from the date of judgment with respect to the petitioner and other interested parties who appeared in the proceedings (article 358(2) CCP). For other interested parties who did not appear in the proceedings the period is three months from the notification of the decision or from the moment that they became aware of the decision by other means (article 358(2) CCP). If an interim decree is issued in the course of the proceedings, appeal to the interim decree is in principle only possible after the final decree of the instance has been rendered. The court may however provide otherwise in the interim decree, e.g. by allowing ‘direct’ appeal of the interim decree (article 358(4) CCP).

If appeal is made against a decree, the effect of the decree (and its enforcement) is suspended, unless the court has given its decision ‘*bij voorraad*’, in which case the decree is enforceable at once (article 360 CCP). A decree issued in appeal (in second instance) may also be given ‘*by voorraad*’ and thus be enforceable immediately.

After a decision in second instance, the remaining legal remedy is cassation by the Hoge Raad (Netherlands Supreme Court). The period for cassation for decrees is three months from the date of judgment (article 426(1) CCP). In case the time limit for appeal has been shortened by legislation, the time limit for cassation is limited as well and is set at double the period for appeal (article 426(2) CCP). This means that in summary proceedings the time for cassation (following a decision in appeal) will be eight weeks.

### 3. Decisions rendered in the absence of the defendant

#### *Cases commenced by writ*

In case a decision commenced by writ is given in default of appearance of the defendant, the defendant has the possibility of a special form of appeal known as ‘*verzet*’ (article 143 CCP). Once the decision – given in default - is notified to the defendant, the defendant has four weeks for ‘*verzet*’ (article 143(2), 1<sup>st</sup> sentence, CCP). If the defendant in default of appearance resides outside the Netherlands at the time of notification, the period for appeal is eight weeks (article 143(2), 2<sup>nd</sup> sentence, CCP). It is also possible that it necessarily follows from the conduct of the defendant that he is aware of the court decision. In that case the same time limits for appeal (‘*verzet*’) apply from the moment that the defendant commences this conduct.

The effect of the appeal is that the proceedings (usually in first instance) are reopened. By appealing the defendant is considered to have reacted on the statement of claim by the plaintiff (article 147 CCP).

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

c. The effect of appeal on enforceability

Appeal will suspend enforcement, unless immediate enforcement is allowed in the court decision (article 360(1) CCP). The appellate court may refuse immediate enforcement if this was allowed by the lower court or, to the contrary, may grant the right of immediate enforcement (article 360(2) CCP).

3. Coercive measures to ensure enforcement

a. Measures available by law

b. Measures usually taken in practice

c. Taking of coercive measures when the child opposes enforcement

See the discussion supra, 1.a.2-a.4.

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

When a child is 12 years or older, cases that concern the child can only be decided after the minor has had the chance to offer his opinion, unless the court considers the case 'clearly has little importance' (to the child, it is assumed) (article 809 CCP). There is no clear legal definition of what is understood under 'cases that concern the child'. Legal writing suggests that this should be understood as cases that concern the legal position of the child at the time the cases is commenced. This means that children of 12 years and older must be heard in most cases that involve them. Note: the appointment of a special guardian is the kind of proceeding that is considered of little importance to the child.

The hearing of child will take place in proceedings on 'gezag' (authority) matters and contact. The procedural handling is set out in more detail in the current 'Procesreglement' (Regulation on proceedings) of 24 March 2004 (found in the Annex).<sup>9</sup>

In abduction cases, article 13(2) of the Act of 2 May 1990 regulates the hearing of the child. According to the provision a court will not decide on a request to return the child before the child has had a chance to give his opinion. The effect of this provision is that the 'standard' age limit of 12 years in Netherlands internal law is not applicable in child abduction cases as article 13(2) of the Act does not mention an age limit.

## 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.

### LEGAL BASIS FOR THE ENFORCEMENT OF RETURN ORDERS

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<sup>9</sup> Procesreglement gezag/omgang/verblijfplaats/informatie- en consultatierecht, Regeling van 24 maart 2004, Stcrt. 58.

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.

Dutch report:

Response: Under Article 813 of the Act implementing the 1980 Luxemburg Convention and the 1980 Hague Convention, if the court grants the application for the child's return, it shall order the child's surrender to the person who has custody rights over the child or, if its order cannot be implemented immediately, provisionally place the child in the care of the Child Protection Board. The return order is immediately enforceable notwithstanding any appeal. The former article 926 of the Code of Civil Procedure, now: article 813 of that Code, applies to the enforcement of a return order. See the response to question 2. An appeal against a return order must be lodged within two weeks of the date of the order (the usual time limit for orders in family law matters is two months).

Additions to the Dutch report:

The reference to Article 813 of the Act implementing the 1980 Luxemburg Convention and the 1980 Hague Convention should be a reference to Article 13(5) of that Act (*note*: previously in this report the Act implementing the 1980 Luxemburg Convention and the 1980 Hague Convention has been designated as 'the Act of 2 May 1990').

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.

Dutch report:

Response: Under article 813 of the Code of Civil Procedure, the Office of the Public Prosecutor lends assistance, where necessary, in effecting the surrender of the child under article 812. Article 812 provides that any order relating to the exercise of custody rights over minor children entitles the person to whom these minors are provisionally or permanently entrusted to have them surrendered to him or her, if necessary with the assistance of the police. Article 813 furthermore provides that the police officer designated to lend the assistance referred to shall have access to any premises, insofar as this is reasonably necessary for the performance of his duty.

Additions to the Dutch report:

On 1 May, 2006, the Act implementing the 1996 Hague Child Protection Convention and Regulation 2201/2003 entered into force. The Act contains the following provisions relevant to the enforcement of court orders as referred to in the question.

a. Article 4 determines that the Minister of Justice is the Central Authority for the Netherlands as meant in Article 29 of the 1996 Hague Child Protection Convention and in Article 53 Regulation 2201/2003.

Article 6 provides that the Central Authority (CA) may order the Council for Child Protection to commit certain actions falling within the competence of the CA.

Article 7 orders the municipalities and the civil servants of the municipal registers to provide any information of these registers to the CA without any costs.

Article 8(1) designates the officers of the Public Ministry to whom the CA can address itself when it needs assistance in finding out the whereabouts of a child.

Article 8(3) determines that a police officer involved in tracing the place of residence of a child shall have access to any premises, insofar as this is reasonably necessary for the performance of his duty.

Chapter 5 of the Act (Articles 15-17) gives rules regarding procedures for the recognition, non-recognition and enforcement of foreign decisions given under the 1996 Hague Child Protection Convention. It especially determines the Court that shall be addressed with a request regarding (non-)recognition and enforcement, the procedure to be followed and the possibilities for appeal.

Chapter 6 of the Act (Articles 18-23) gives rules on the recognition, non-recognition and enforcement of foreign decisions given under Regulation 2201/2003. The chapter determines the jurisdiction of the courts mentioned in the information published by the Commission by virtue of Article 68 Regulation 2201/2003 (OJ 2005 C 40/2). Further, it gives procedural rules and it excludes the procedure of Article 1:26 Dutch Civil Code (on the recognition of foreign divorce decisions) from being applied with regard to divorces granted in Member States.

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).

Dutch report:

No response.

Additions to the Dutch report:

Mention should be made of the "Protocol Internationale Kinderontvoering" (Protocol International Child Abduction). This Protocol contains guidelines for the CA. It is not legislation but it is an internal working document of the Ministry of Justice. It is publicly available [and a copy is annexed to this report].

The Protocol contains flow charts for the several stages of procedures regarding child abduction and international visiting rights, as well as explanations to these flow charts. The flow charts and explanations do not only describe the existing legislation as a kind of check list for the officers of the CA but they also give instructions on how to act in certain situations that are not determined by legislation. Before these instructions can be described as far as they relate to the enforcement of return orders and access orders, it should be mentioned that the Protocol is not legislation and is therefore in itself not legally binding. Nevertheless it may play a role in certain circumstances. (E.g. in the case of Hof Amsterdam, 19 May 2005, NIPR 2005, 215, the defending parent had advocated that the claim of the CA should be declared inadmissible as the CA had not performed its task in a proper way. The Hof decided that the CA had acted according to the existing legislation and to the Protocol and had therefore acted properly.)

From the explanation to the flow chart on the enforcement of return orders, the following information can be derived.

As a first step of enforcement, the abducting parent or his lawyer is contacted for deliberation (§ 1.1.4.2). If the abducting parent is willing to cooperate, appointments are made for the

voluntary return of the child (§ 1.1.4.3). Depending on the extent to which the CA has confidence that the abducting parent, the CA will require guarantees that this parent will keep his promises. Such a guarantee may, a.o., be a copy of the plane ticket or proof of housing arrangements made in the state of origin (§ 1.1.2.1). The CA sends to the requesting CA a message of the willingness of the abducting parent and of the appointments made (§ 1.1.2.2). As far as necessary or desirable, the CA keeps track of the actual return of the child, especially by means of contact by telephone and by means of requiring copies of relevant documents (§ 1.1.2.3). The most appropriate CA informs the other CA that the return of the child has actually taken place (§ 1.1.2.4). Having regard to the urgency of the matters at issue, communications take place by fax or by e-mail (§ 1.1.2.5).

If the abducting parent is not willing to cooperate, the assistance of the Public Prosecutor is called in in order to make sure that the child is handed over to the requesting parent. The actual order to safeguard the child is given to the police. Generally, the case is handled by specialised officers of the youth and vice squad, accompanied, where possible, by officers of the Child Care and Protection Board or a guardianship agency. Until the child can be handed over to the requesting parent it is placed in a temporary foster family or a comparable solution is sought (§ 1.1.4.4).

If the child is taken into hiding, the assistance of the Public Prosecutor is invoked in order to find the child and to collect it for return to the requesting state. The public prosecutor may request the rechter-commissaris (a judge who supervises processes of investigation, comparable to the French juge d'instruction) for permission to tap telephone lines (§ 1.1.4.6). If the child is found, the police will collect it as described above.

The police is consulted about the time and place for handing over the child to the requesting parent when he or she has arrived in the Netherlands. Generally, the police carries out the transport of the child to that place (§ 1.1.4.7).

An opportunity shall be given to the abducting parent to say good-bye to the child (§ 1.1.4.8). If chances are that the abductor will flee with the child, such opportunity may be refused (§ 1.1.4.13).

The court may order a temporary guardianship at any time, even in combination with its final return order. This temporary guardianship is assigned to a specialised guardianship agency. In such a case, the abductor shall hand over the child to this guardianship agency. The agency will almost always take away the child from the abductor and place it in a temporary foster family or in a child centre (§ 1.1.4.9)

As the guardianship agency has (temporary) parental responsibility, it will be consulted about the actual return of the child. Further, the other rules and instructions remain applicable (§ 1.1.4.10).

When the child's journey home is approaching, it is traced whether there is a valid passport for the child. If not, or if the abductor refuses to hand over the passport, an application is made to the consulate of the nationality of the child for a laissez-passer. On some occasions this can be done by the requesting parent, if he or she has sufficient time between arrival in the Netherlands and departure for the return (§ 1.1.4.11). Although not explicitly mentioned in the protocol, one may presume that on other occasions the CA or the guardianship agency will take care for requesting a laissez-passer.

If the child is handed over to the requesting parent at Schiphol Airport, it is desirable that the head of the Royal Constabulary checkpoint is asked for assistance. In that case, the handing over can take place in his office and the parents will not have to meet each other (§ 1.1.4.14).

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?

Dutch report:

Response: Cases where the surrender has to be effected with the assistance of the police may arouse interest of the media. Often such publicity does not help resolve the underlying dispute of the parents.

Additions to the Dutch report:

None.

## 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?

Dutch report:

Response: A and B.

Additions to the Dutch report:

None.

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.

Dutch report:

Response: B and C.

Additions to the Dutch report:

None.

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

Dutch report:

Response: It is the responsibility of the abductor. If the abductor is not willing to do so, the applicant is requested to collect the child.

Additions to the Dutch report:

See also the description of the role of the CA, Public Prosecutor, police and (in some cases) guardianship agency as described in the Protocol mentioned under question I.3.

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?

Dutch report:

Response: No. No authorization or other decision is required for the actual enforcement.

Additions to the Dutch report:

None.

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.

Dutch report:

Response: The Central Authority

Additions to the Dutch report:

None.

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

Dutch report:

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Additions to the Dutch report:

None.

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.

Dutch report:

Response: The Central Authority has an enforceable decision (by operation of the law) of a court. Usually the abductor is given the opportunity to return the child him-/herself. If the abductor is not willing to do so, the applicant is requested to collect the child. When the child is taken into hiding by the abductor, the Public Prosecutor can be requested to discover the whereabouts of the child. The Central authority then arranges for the child to be collected by the applicant.

Additions to the Dutch report:

See also the description of the role of the police and (in some cases) guardianship agency as described in the Protocol mentioned under question I.3.

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).

Dutch report:

Response: Under article 9 of the Act implementing the 1980 Luxembourg Convention and the 1980 Hague Convention, the Central Authority (in order to ascertain the whereabouts of a child in the Netherlands) applies to the Public Prosecutor in the District in which the child is believed to be, or to the Public Prosecutor in The Hague. The Public Prosecutor then requests the police to trace the child. When the whereabouts of the child have been established, the police will collect the child, if necessary in the company of the Child Care and Protection Board. Subsequently the applicant can come and collect the child.

Additions to the Dutch report:

None.

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?

Dutch report:

See the answer to question 3a. If necessary, the Child Protection Board will make appropriate arrangements in order to prepare the child and/or the defendant for the return.

Additions to the Dutch report:

None.

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.

Dutch report:

See the answer to question 3a.

Additions to the Dutch report:

None.

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)?

Dutch report:

Response: Yes, there is supervision by the Central Authority itself.

Additions to the Dutch report:

None.

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?

Dutch report:

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Additions to the Dutch report:

None.

C. The actual enforcement procedure

1. Is there a timeline for enforcement?

Dutch report:

Response: Yes, usually a timeline is determined in the decision of the court. If this is not the case, the Central Authority determines a reasonable period in accordance with the circumstances of the specific case.

Additions to the Dutch report:

None.

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?

Dutch report:

Response: Yes, it is 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.

Additions to the Dutch report:

None.

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.

Dutch report:

Response: Yes. The Central Authority can request the court to order a temporary guardianship.

Additions to the Dutch report:  
None.

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?

Dutch report:

Response: The decision of the court ordering the return of the child is immediately enforceable. So if the child is taken into hiding after the order was made, the Central authority can apply immediately to the Public Prosecutor in order to ascertain the whereabouts of the child. See the answer to question 3, letter B.

Additions to the Dutch report:

See also the description given in the Protocol mentioned under question I.3.

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)?

Dutch report:

Response: See the answers under B.

Additions to the Dutch report:

None.

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?

Dutch report:

Response: In theory coercive measures such as fines and imprisonment of the abductor can be taken, but those measures are usually not thought to be in the best interest of the child.

Additions to the Dutch report:

None.

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

Dutch report:

Response: Yes, they have to be ordered by the court (on the request of the Central Authority if deemed necessary).

Additions to the Dutch report:

None.

b) If problems occur during enforcement, may the enforcement organs unilaterally “upgrade” 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.

Dutch report:

Response: Yes, at the enforcement stage the Public Prosecutor may request the court to upgrade the intensity of coercive measures ordered at an earlier stage on the request of the central authority.

Additions to the Dutch report:

None.

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?

Dutch report:

Response: If there is an immediate danger for the child, the court may, at the request of the Child Protection Board, order a provisional protective measure in ex parte proceedings. In most cases the abductor is heard within a few days by the judge so that the judge can decide whether or not the protective measure is to be continued. In such circumstances, usually the enforcement is suspended.

Additions to the Dutch report:

None.

#### 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?

Dutch report:

Response: Usually not. If there are costs for enforcement, they are paid for by the Central Authority.

Additions to the Dutch report:

None.

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?

Dutch report:

Response: The Central Authority bears the costs for enforcement. In return cases the Central Authority itself institutes the legal proceedings so there is no use for a legal aid system. The abductor might be entitled to legal aid, depending on his/her wages.

Additions to the Dutch report:

None.

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?

Dutch report:

Response: No, the costs of the actual repatriation are not considered as part of the enforcement costs. These costs have to be paid by the parents of the child.

Additions to the Dutch report:

None.

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

Dutch report:

Response: If they ask for information, the Central Authority will provide this information.

Additions to the Dutch report:

None.

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

Dutch report:

Response: The duties in enforcement matters are not specified as compared to the normal duties of the Central Authority

Additions to the Dutch report:

None.

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

Dutch report:

-

Additions to the Dutch report:

None.

### 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.).

Dutch report:

Response: Yes. The time limit for an appeal against a return order by the Court of first instance is two weeks as of the date of the order. The time-limit for appeal against an order of the Appellate Court is four weeks as of the date of the order.

Additions to the Dutch report:

None.

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

Dutch report:

Response: The appeal against the return order, which is granted by the Children's judge within the Court of first instance, is given by the Appellate Court. An order by the Appellate Court is subject to appeal to the Supreme Court.

Additions to the Dutch report:

None.

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).

Dutch report:

Response: No authorization or other decision is required for the actual enforcement.

Additions to the Dutch report:

None.

b) Which is the competent organ for these decisions?

Dutch report:

-

Additions to the Dutch report:

None.

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?

Dutch report:

-

Additions to the Dutch report:

None.

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.).

Dutch report:

-

Additions to the Dutch report:

None.

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.

Dutch report:

-

Additions to the Dutch report:

None

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?

Dutch report:

-

Additions to the Dutch report:

None.

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

Dutch report:

No response.

Additions to the Dutch report:

None.

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 judgements (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?

The Netherlands is a party to

- the Convention concerning the powers of authorities and the law applicable in respect of the protection of minors (The Hague, 5 October 1961);
- the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Luxembourg, 20 May 1980; also referred to as "the European Child Abduction Convention).

An act of implementation has been issued to both the 1980 Hague Child Abduction Convention and the European Child Abduction Convention. Reference to this Act has been made already in the answers to the questions on child abduction, under 2A.

The Netherlands signed but not yet ratified the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (The Hague, 19 October 1996). Date of signature: 1 September 1997.

An act of implementation has been issued to both this Convention and Regulation 2201/2003. See also the description of the most relevant provisions under 2A, question 1.

If a decision rendered in Belgium might, for whatever reason, not fall within the scope of Regulation 2201/2003, it may perhaps be enforced by virtue of the bitateral agreement between The Netherlands and Belgium of 28 March 1925. This agreement determines, in Dutch-Belgian cases, the jurisdiction of the courts and the recognition and enforcement of decisions in civil and commercial cases, including family law cases. For decisions falling within the scope of Regulation 2201/2003, the applicability of the agreement is excluded by Article 59(1) of the Regulation.

If a decision rendered in Italy might, for whatever reason, neither fall within the scope of Regulation 2201/2003 nor within the scope of the 1961 Hague Child Protection Convention, it may perhaps be enforced by virtue of the bitateral agreement between The Netherlands and Italy of 17 April 1959. This agreement determines, in Dutch-Italian cases, the recognition and enforcement of decisions in civil and commercial cases, including family law cases. For decisions falling within the scope of Regulation 2201/2003, the applicability of the agreement is excluded by Article 59(1) of the Regulation.

If a decision does not fall within the scope of Regulation 2201/2003 or one of the international conventions, the law on its recognition and enforcement in the Netherlands is as follows. Article 431 para. 1 of the Dutch Code of Civil Procedure (hereinafter: CCP) provides that foreign court decisions cannot be enforced within the Netherlands, unless there is either a convention between the Netherlands and the State where the decision was rendered or if there is Dutch legislation allowing the enforcement. There is no legislation providing for the enforcement of decisions in matters of parental responsibility. Article 431 para. 2 CCP

provides that if a foreign judgment has been given, the case can be brought anew in the Dutch courts. This seems a very short and clear (and negative) answer to the question. However, the application of Article 431 CCP by Dutch courts, including the Hoge Raad (the Dutch Supreme Court for civil cases), shows that effect is given to foreign decisions in a way that is, to a large extent, similar and perhaps even equal to full enforcement.

In 1916, the Hoge Raad decided that Article 431 CCP does only forbid the enforcement of foreign decisions "through the means of execution given by the Dutch legislation" (HR 24 November 1916, NJ (= Nederlandse Jurisprudentie) 1916, at p. 5). In other words, the Article does not object against enforcement through another way than the enforcement procedure of the Articles 985 - 994 CCP.

In 1924, the Hoge Raad ruled that the Dutch courts must decide in each particular case if and to which extent authority must be attributed to a foreign judgment (HR 14 November 1924, NJ 1925, 91). This decision was on a pecuniary claim but may also be applied to foreign decisions in matters of parental responsibility.

This decision was given in a case where a plaintiff whose claim had been rejected abroad started new proceedings in the Netherlands. His claim was dismissed by the Dutch court without an evaluation of the merits of the case, as the plaintiff was regarded to be bound by the foreign decision.

In matters of parental responsibility, it will quite often be sufficient that a decision is recognised and the enforcement of the decision will quite often not be at issue. E.g., if the foreign judgment determines that parent A has sole custody and parent B shall hand over the child to A, it is sufficient that the judgment is recognised in The Netherlands. Even if the decision would not explicitly state that the child should be handed over to A., the obligation for B to do so would be obvious just as anyone is obliged to hand over a child to the parent having parental responsibility. Handing over the child must, in such cases, take place in the same way as if a Dutch court had decided on the sole custody.

There may be occasions, however, where the enforcement of the decision must be at issue, e.g. if a judgment determines visiting rights. In such cases, the question rises whether enforcement is possible in the Netherlands, notwithstanding the terms of Article 431 CCP. Regarding the Hoge Raad decision of 1924 mentioned above, one may say that the issue was not the enforcement but the recognition of the foreign judgment. The decision of the Hoge Raad, however, was formulated in a broader sense. The question which authority must be attributed to the foreign decision may also rise when it comes to enforcement.

This raises a question: how can one enforce a foreign judgment if one cannot make use of the enforcement proceedings of the Articles 985-994 CCP?

The technique applied by Dutch lawyers for such cases is to start ordinary court proceedings. In these proceedings, however, they do not bring the same claim as was brought in the foreign proceedings but they claim that the defendant is ordered to fulfil the obligations to which he is bound by the foreign judgment. Then, the Dutch court will only examine whether the foreign judgment shall be recognised and what the obligations of the defendant are under that judgment, and if the judgment is recognised the defendant will be ordered to fulfil his obligations. A new examination of the merits of the case will not take place.

Dutch courts, however, do not recognise foreign judgments without any restrictions. The foreign judgment must meet certain requirements. Although these requirements are not laid down in legislative provisions, it is generally agreed that they must not lead to a re-examination of the merits of the case. The criteria applied by the courts will often be those of existing international instruments. Until recently, the criteria of the 1961 Hague Child Protection Convention were generally applied but it is likely that nowadays the courts will more and more apply the criteria of Regulation 2201/2003 and/or the 1996 Hague Convention. There is only one important difference in this respect. Regulation 2201/2003

forbids the enforcing court to re-examine the jurisdiction of the issuing court. This is, however, because in cases governed by the regulation the issuing court must have examined its jurisdiction under the rules of the Regulation. When a judgment is given by the court of a non-Member State, there is no certainty that that court applied jurisdiction rules such as those of the Regulation. Therefore, the Dutch court will examine in such cases whether the jurisdiction of the issuing court was internationally acceptable. It may be expected that the Dutch court will answer this question in the affirmative when the foreign court would have had jurisdiction if the Regulation were applicable.

## 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.

An act of implementation has been issued to both Brussels 2A and the 1996 Hague Child Protection Convention. See also the description of the most relevant provisions under 2A, question 1.

## 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.

Generally, a Dutch court having jurisdiction will decide to the merits of the case. Whether that decision is enforceable abroad, will not influence the court in determining the rights and obligations of the parties in accordance to the applicable law. This does not mean that the international character of the case is of no meaning at all. E.g., when the court is convinced that there is a serious risk of child abduction it may require that visiting rights are exercised in the Netherlands and under supervision only.

As to supporting orders, the issue will rise in exceptional cases only. Whether the supporting order is given in combination with the original decision or whether it is given afterwards, jurisdiction will primarily exist when the child has its habitual residence in the Netherlands. In cases where the child lives abroad, jurisdiction of the Dutch courts may be dependant on the consent of both parents (e.g. Article 12 Brussels 2A). In such cases the court will often trust that the parents will obey the decision voluntarily and therefore it will probably not give supporting orders.

Nevertheless, cases may occur in which the court knows on beforehand that enforcement may have to take place abroad, such as when the jurisdiction of the court is based on Article 9 Brussels 2A or when it is expected that the child will (legally) move abroad after the decision will have been given. But even in those cases, the enforceability of supporting orders will not often raise questions. If the order allows police intervention, it will most probably do so in general terms. Then, it will depend on the law of the state of enforcement whether and how the intervention is given. If an order is given for a periodic payment by way of penalty (dwangsom), the place of enforcement will not primarily depend on the residence of the child or the defendant, but on the place(s) where the defendant possesses assets. This/these place(s) will often not be known to the issuing court. If detention of the defendant is ordered, it is obvious that there may be a serious problem when the detention should be enforced abroad.

It seems likely that a court, being aware of the fact that the decision will have to be enforced abroad, will take that factor into account when making a choice for one or another measure to be given. To the author of this report, however, no case law is known where explicit deliberations are given to this issue.

#### 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 your 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.

Under Brussels 2A, an enforcement order shall be given to a decision given by a court of another Member State. The enforcement order may be refused if one of the requirements of Article 23 Brussels 2A have not been met. If the foreign court has ordered a way of enforcement that is manifestly contrary to the public policy of the Netherlands, the enforcement order can be refused (at least as far as that way of enforcement is concerned). If the enforcement has to take place by virtue of a certificate issued in conformity with one of the Articles 41 and 42, there is no possibility at all to invoke the public policy exception. It is obvious that the police and other institutions cannot and will not act beyond the powers conferred upon them by Dutch law.

The defendant may, in summary proceedings, claim an inhibition to (further) enforce a decision or for an inhibition to use certain methods of enforcement. He may do so if the decision has been given by a Dutch court or by a foreign court. Such a claim will be awarded only in exceptional cases. The mere fact that the foreign court gave another decisions or formulated other modalities than a Dutch court would have done is not an argument to make such a claim. The claimant may, however, invoke specific circumstances of the case, especially when these circumstances could not have been foreseen by the issuing court. It would not seem entirely impossible that a Dutch court might, in such cases, tend to be more favourable to "Dutch" means of enforcement than to the way of enforcement prescribed by the foreign court.

#### 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.

Recognition of a foreign judgment means its reception in the Dutch legal order as if it were given by a Dutch court. Therefore, the rules for substituting a foreign judgment by a Dutch one are the same as those for overruling a Dutch decision by a new one.

For issuing a new judgment, it is required in the first place that the Dutch court has jurisdiction according to Brussels 2A.

Then, as Dutch law will be applicable to the request, the substantive requirements of Dutch law must be met. Article 1:253o Dutch Civil Code determines that decisions conferring sole parental responsibility upon one of the parents can be replaced by another decision only

- if circumstances have changed since the first decision was given; or
- if the first court based its decision on incomplete or wrong data.

A decision on access rights may, by virtue of Article 1:377e Dutch Civil Code be replaced under the same conditions.

Article 1:253a Dutch Civil Code determines that if the parents having joint parental responsibility do not agree on any issue, either of them can request the court to decide. There is no specific provision on the replacement of such decisions but it seems obvious that a request for a new court decision will be declared inadmissible if circumstances have remained unaltered and no evidence is given that the first decision was based on incomplete or wrong data.

## 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.

In addition to the organs and institutions mentioned under B.1 a-c above, it may be noticed that the Central Authority for the Hague Child Abduction Convention lists in its protocol several other institutions that may be involved in concrete cases:

- the Ministry of Foreign Affairs;
- the Office of the Public Prosecutor;
- the Immigration and Naturalisation Service (Immigratie en Naturalisatiedienst, IND, see answer to Q. 2A 1.2);
- guardianship agencies (see answer to Q. 2A 1.3)
- lawyers;
- International Social Services;
- private interest groups (whose help is often invoked by defendants).

### 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.

Most time limits for appeal are equal for internal and for international cases. However, the time limit for appeal in child abduction cases is, different from ordinary family cases, restricted to two weeks (see the answer to Q. 2A 1.1).

Enforcement internationally may be time consuming due to the time needed for the international notification of documents, for obtaining an enforcement order (where needed), for international communications etc. There is, however, no formal limitation period for the enforcement of foreign decisions. Only if the decision loses its validity in the country of origin, it can no longer be enforced in the Netherlands as the authorities of the requested state cannot enforce more than was given in the issuing state.

The passing of time may, in family matters, influence the actual enforceability of a decision. Generally, it will make no difference whether that decision was given in the Netherlands or abroad.

### 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 measures for cross-border cases, neither are any measures excluded in cross-border cases. See also the answer to Q. 2B 3.

### 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.

As mentioned above, the service of documents may be more time-consuming in cross-border cases than in internal cases. In cases having to do with non-Member States, the legalisation of documents may create additional problems that slow down the enforcement process. Further, Dutch and foreign authorities and lawyers are not always sufficiently aware of the rules in international cases.

It is not always possible to obtain a residence permit for a child in the Netherlands, even if the parent(s) having parental responsibility legally reside(s) here. This may be an obstacle to the compliance with the (foreign or Dutch) decision even if no disputes about its enforcement exist.

### 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 your 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)

A decision declaring that one of the parents has parental responsibility is given without any geographical restriction. Since 1998, however, the parents keep joint responsibility after divorce in the very most cases. In those cases, if the parents do not agree on the residence of the child, the court decides with whom of the parents the child shall reside. See also the next question, about changing the habitual residence of the child.

Decisions providing access rights generally do not determine the place where the contact shall take place. On exceptional occasions restrictions may be set. This is especially the case when the court is convinced that there is a serious risk for child abduction. E.g.: Rechtbank 's-Gravenhage, 8 June 1994, NIPR 1994, 390: during a certain period of time, the father had visited the children at their mother's home. Additionally, he wants to have the children with him during (part of) the summer holidays. The mother fears that he will flee with the children to Indonesia. The court continues the existing arrangement for the time being. Rechtbank 's-Gravenhage 7 November 1997, NIPR 1998, 85: comparable case; the mother fears child abduction to Egypt and opposes an arrangement whereby the children visit the father for the whole weekend. The court: the visitation rights must be expanded gradually. That will give the parents the opportunity to develop a mutual trust, so that in the end a weekend visit will be feasible. Rechtbank 's-Gravenhage 5 August 1997, NIPR 1997, 324: the father may have the child with him during fourteen days. Having regard to the mother's fear for child abduction and, as well, to the very young age of the child, these fourteen days must be spent in the Netherlands during the first year, but for the following years the father is allowed to take the child with him for a holiday in Syria.

- 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?

Generally, the parents have joint parental responsibility, even after divorce. As the change of the habitual residence of the child is a matter to which both parents have to agree, moving abroad of one of the parents with the child is only possible with either the consent of the other parent or with court permission. No reported cases are known to the reporter where such permission was at issue. There have, however, been several cases where a parent with sole parental responsibility moved abroad with the child. In one case, it was the moving parent who applied for court permission. In this case, the mother had been granted sole parental responsibility and access was granted to the father by the Rechtbank Almelo. In case the mother would not cooperate, a periodic payment by way of a penalty would fall due. The mother moved with the children to Canada. Before another Dutch court, the mother applied for annulling the arrangement and for withdrawing the thread of a penalty payment. The Rechtbank 's-Gravenhage (17 April 1998, NIPR 1999, 57) and, in appeal, the Hof 's-Gravenhage (20 November 1998, NIPR 1999, 57) declared to have no jurisdiction as the child had its habitual residence in Canada.

In other cases, it was the parent without parental responsibility who brought the case in court. In all of these cases (as far as known to the reporter) the Dutch courts refused jurisdiction as well because the child had no more habitual residence in the Netherlands: Rechtbank 's-Gravenhage 8 October 1986, NIPR 1987, 94 (father moved with the child to Austria); Rb. 's-Gravenhage 22 juni 1994, NIPR 1994, 393: (mother moved with the child to Spain).

- 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

No specific comments

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

See Q 2B 1.

## 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.

Mediation is not obligatory. It is, however, more and more applied in practice.

From the response of the Dutch delegation to the questionnaire concerning the practical operation of the Hague Child Abduction Convention one may derive the following information, partly applying to non-child abduction cases as well:

From the beginning of 2006 Family law courts – in all cases – urge parents to seek information and discuss the possibility of mediation to enter into an access agreement.

Facilitating access to mediation will be one activity of the “Centrum Internationale Kinderontvoering” which was set up on the initiative of a few private organisations and receives a subsidy from the Ministry of Justice. The centre started its activity on 1st June, 2006. ([www.kinderontvoering.org](http://www.kinderontvoering.org)).