

**The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017**

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<b>Title</b>	Fact Sheets on swift procedures in the operation of the 1980 Child Abduction Convention	
<b>Author</b>	Permanent Bureau	
<b>Agenda item</b>	No 3	
<b>Mandate(s)</b>	States' responses to Preliminary Document No 2, "Questionnaire on the Practical Operation of the <i>Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction</i> "	
<b>Objective</b>	On the basis of information in the Country Profiles for the 1980 Convention, the PB has developed fact sheets for a number of States that have had success in expediting the return process. The fact sheets focus on States' practices in several areas that contribute to swift returns: (1) the Central Authority phase of the process; (2) the judicial phase of the process; (3) the enforcement phase of the process; and (4) mediation.	
<b>Action to be taken</b>	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>	
<b>Annexes</b>		
<b>Related documents</b>		

## Introduction

Attached are fact sheets on selected States that have established a strong record in achieving swift returns under the 1980 Convention. The information in the fact sheets is derived primarily from the Country Profiles of the respective States, supplemented by statistical information from the Statistical Analysis of Applications Made in 2015 under the 1980 Convention ("2015 Statistical Analysis")<sup>1</sup>. The fact sheets focus on practices in the following areas:

- Central Authority phase of the return process:
  - Central Authority operations
  - Applications for return
  - Locating the child
  - Training
- Judicial phase of the return process:
  - Organisation of competent authorities
  - Legal representation and assistance
  - Procedures
  - Appeals
  - Direct judicial communications
  - Training
- Enforcement phase of the return process
- Mediation

With respect to the statistical information in each fact sheet, please note that the figures for the number of return cases received in 2015 are derived from Annex 1 of the 2015 Statistical Analysis. The figures for the average number of days for the Central Authority phase and the judicial phase in 2015 are derived from Annex 6 of the 2015 Statistical Analysis.

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<sup>1</sup> See "A Statistical Analysis of Applications Made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I – Global Report", prepared by Prof. Nigel Lowe and Victoria Stephens, Prel. Doc. No 11 A of August 2017 for the attention of the Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention.

## Annex 1: Australia

Information below is based upon Australia's 2017 Country Profile.

Number of return cases received in 2015: 45

Average number of days for Central Authority phase in 2015: 54

Average number of days for judicial phase in 2015: 123

### I. Central Authority Phase

Central Authority operations:

- The Central Authority has dedicated staff who deal only with 1980 Hague Child Abduction Convention applications and related issues.
- Professions represented in the Central Authority: civil servants (including legal advisors).

Applications for return:

- The Central Authority accepts (1) the HCCH Model Application Form; (2) the Australian form accessible on the Attorney General's website; or (3) the form of the requesting State.
- The Central Authority will begin processing the application if it is received electronically, however the original documents are required to be submitted to the courts.
- The Central Authority requires a written authorisation empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where information provided is incomplete, the Central Authority is unable to process the application but will immediately inform the requesting Central Authority of what additional information is required before further action can be taken.
- The matter is usually filed in court at the same time that attempts to seek voluntary return or initiate mediation are done. This ensures that if attempts to resolve the matter amicably fail the matter can proceed to hearing by the court without delay.

Locating the child:

- In most cases the location of the child is known. However, if the child has not yet been located, it is possible for the return proceedings to commence in order for the making of orders by a court designed to assist in the location of the child.
- The application should include any specific information as to a possible address. Once an application is received, immigration and travel movement records are obtained from the Australian Department of Immigration and Border Protection. That information often identifies the whereabouts of the child.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Information maintained by other government agencies
  - Police
  - INTERPOL
  - Court orders to compel the production of information on the whereabouts of the child

Training:

- Training is provided as required for Central Authority staff, including lawyers. Training also includes updates provided as required on legal developments related to the Convention as well as training for staff of the Department of Foreign Affairs and Trade.

## II. Judicial Phase

Organisation of competent authorities:

- Australia has “concentrated jurisdiction” of courts in respect of applications under the Convention.
- The competent courts are the Family Court of Australia and the Family Court of Western Australia. Approximately 38 judges can hear return applications, though some of these judges would, in practice, only hear such cases on appeal.
- The judges who decide return applications are specialists in family law.

Legal representation and assistance:

- Australia has not made a reservation to Article 26 of the Convention.
- The Central Authority does not provide legal advice regarding return applications. However, the Central Authority will provide information that is of a general nature about laws and procedures.
- Legal representation is not required in return proceedings, provided that the applicant seeks the assistance of the Australian Government to secure the return of the child. The Central Authority of the relevant State or Territory where the child is located or the Australian Commonwealth Central Authority (ACCA) makes the court application but acting on behalf of and representing Australia, not the applicant parent.
- If an applicant parent wishes to be represented separately they would be advised to commence the proceedings themselves as is permitted under relevant law.
- The assistance of the Central Authority described above is provided free.
- Such assistance covers the following costs: service of documents; costs associated with locating the child; court fees.
- If the ACCA determines that a matter is an appropriate one for appeal, it will meet the costs associated with the appeal. If the ACCA does not appeal the decision the applicant may choose to do so, at the applicant’s expense.
- The Central Authority will also provide assistance in enforcement proceedings.

Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings:
  - Subregulation 15(2) requires that a “...court must, so far as practical, give to an application such priority as will ensure that the application is dealt with as quickly as a proper consideration of each matter relating to the application allows.”
  - Subregulation 15(4) provides that if an application for return is not determined within 42 days commencing on the day on which the application is filed, the Registrar of the Court may be requested to state in writing the reasons for the application not having been determined within that period and the Registrar must provide that statement as soon as practicable after being asked.
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): 6 weeks to 6 months.
- The applicant generally is not required to attend the return proceedings in person, but must provide material to support the application in the form of affidavit evidence. In some circumstances Australian courts have determined that the appearance of the applicant (whether in person or via phone or video link) for the purposes of cross examination, is required.
- There is always a hearing to decide the return application.
- Oral evidence will normally only be taken where the court considers it is unable to determine the matter on the written evidence that has been provided and any oral submissions made by the legal representatives.
- Regarding hearing the child, any necessary experts reports are usually obtained quickly and independent children’s lawyers can similarly be arranged quickly, and in appropriate cases are usually appointed at an early stage of the case.

#### Appeals:

- There is a right of appeal to the Full Court of the Family Court of Australia against an initial decision on an application for return of a child under the Convention if lodged within 28 days of the judgment. After that period leave is required. The applicant parent (who is not a party to the proceedings if they are being managed by the Australian Central Authorities) would need to seek leave to appeal the decision.
- Appeals from the Full Court of the Family Court of Australia to the High Court of Australia require special leave.
- There is no expedited procedure or special process of appeal for Hague return cases.
- The Central Authority or the alleged abducting parent can appeal a decision to return/not return a child. The applicant parent could, if the Central Authority did not wish to appeal the decision, seek leave from the court to appeal a decision.
- A return order can be suspended pending an appeal at the request of either party and after determination by the judge.
- Generally, appeals are filed and decided within 3 to 6 months.

#### Direct judicial communications:

- The members of the International Hague Network of Judges designated for Australia: Chief Justice Diana Bryant and Justice Victoria Bennett.
- No legislative basis is needed for judges to engage in direct judicial communications.

#### Training:

- Training includes participation in judicial training seminars. The family courts provide training and material to their judges.

### III. Enforcement Phase

- Procedures that may be used to enforce a return order:
  - Directions by a judicial or administrative authority to make arrangements for return
  - Issue of a warrant for the apprehension or detention of the child
- The Central Authority, court and police share responsibility for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, the Central Authority will apply for enforcement.
- The merits of the proceedings for return cannot be reviewed in enforcement proceedings.
- Coercive measures that are available to enforce a return order: intervention by government agency (*e.g.*, police, social welfare); removal of the child from the abducting party; an order placing the child under supervision.

### IV. Mediation

- Mediation can be used for: return / non-return of a child following an alleged wrongful removal / retention; custody; access / contact; relocation; child support; property disputes on relationship breakdown.
- Mediation services available in return cases: Private mediation services; mediation services within the judicial system; mediation services provided by NGOs: the Family Relationships Advice Line and International Social Services Australia; mediation funded by the ACCA.
- The ACCA provides information on identifying mediators.
- The costs of mediation must be borne by the parties. If the ACCA determines that a matter would benefit from mediation, the ACCA may offer to fund this mediation.
- Mediation is available at all stages of the return process, including prior to any application and as a preventive measure where necessary.
- Where legal proceedings have commenced, such proceedings can be suspended while mediation is undertaken, generally at the discretion of the court.
- To make a mediated agreement enforceable, it must be entered as a consent order by the court.

## Annex 2: Austria

Information below is based upon Austria's 2015 Country Profile.

Number of return cases received in 2015: 20

Average number of days for Central Authority phase in 2015: information not available<sup>2</sup>

Average number of days for judicial phase in 2015: information not available<sup>3</sup>

### I. Central Authority Phase

Central Authority operations:

- Professions represented in the Central Authority: civil servants (legal advisors).

Applications for return:

- The Model Application Form or the application form of the requesting State is accepted.
- The Central Authority accepts applications and accompanying documentation transmitted by electronic means. However, the original application must be sent by regular mail.
- The Central Authority requires a written authorisation empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where information provided is incomplete, the Central Authority will begin processing the application and will immediately inform the requesting Central Authority of what additional information is required to complete the request.
- Irrespective of attempts to secure the voluntary return of the child, the Central Authority promptly transfers the application to the competent district court, which appoints a lawyer for the applicant and schedules a hearing.

Locating the child:

- Return proceedings can commence before the child is located if the person alleged to have removed or retained the child is located.
- No information or evidence regarding the child's whereabouts is required; a search in the electronic population registry can begin upon request. Any information where the child might be is helpful.
- social welfare, administrative school authorities (5) Police: provided that the non-custodial parent or a third party abducted the child; (6) INTERPOL: provided that the non-custodial parent or a third party abducted the child;
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Electronic population registry
  - Electronic employment registry
  - Information maintained by other government agencies (social welfare, administrative school authorities)
  - Police
  - INTERPOL

Training:

- Training is provided as required for Central Authority staff. Training also includes updates provided as required on legal developments related to the Convention.

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<sup>2</sup> The Austrian Central Authority was unable to provide information on the date that cases were sent to court. Information on the time between receipt of the application by the Central Authority and the final outcome was only available in 2 applications: one ending in a judicial refusal which took 120 days to conclude and one ending in a judicial return which took 78 days.

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

## II. Judicial Phase

Organisation of competent authorities:

- Austria has “concentrated jurisdiction” of courts in respect of applications under the Convention.
- There are sixteen courts competent to hear such cases or appeals, involving 16 judges.
- The judges who decide return applications are specialists in family law.

Legal representation and assistance:

- Austria has not made a reservation to Article 26 of the Convention.
- The Central Authority provides legal advice regarding return applications.
- Legal representation is required for the applicant; either he makes his or her own arrangements for a legal representative or a pro bono lawyer will be appointed. Legal representation is not required for the respondent but is recommended.
- The competent district court grants legal aid; the pro bono lawyer is appointed by the respective Bar Association.
- Legal assistance covers the following costs: translation; interpreters; service of documents; court fees.
- Free legal assistance is available for appeals.
- Free legal assistance is available for enforcement proceedings.

Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings: Section 5, paragraph 3 of the Austrian Implementation Act.
- The expected time from the commencement of the proceedings for return to a final order (including appeals): more than 12 weeks.
- The applicant is generally not required to participate in the return proceedings but it is advisable.
- Facilities are available to enable the applicant to participate in return proceedings from outside by video-conference or through a legal representative.
- Is it possible for a return application to be decided solely on the basis of the papers, but this is unlikely. Generally there is a court hearing.
- Oral evidence is regularly received in return proceedings.
- Whether to hear from the child and the process for doing so are at the discretion of the judge.

Appeals:

- There is a right of appeal to the regional court, and a second appeal to the Supreme Court (solely concerning questions of law) with the leave of the regional court.
- Appeals to the Supreme Court are heard in specialised chambers.
- Either party to the proceedings can initiate the appeal process.
- A return order is automatically suspended pending an appeal.
- An appeal must be filed within 14 days from the date the decision was notified to the parties or their representatives.
- Generally, appeals are filed and decided within 3 months.

Direct judicial communications:

- The member of the International Hague Network of Judges designated for Austria: Dr. Andrea Ertl.
- No legislative basis is needed for judges to engage in direct judicial communications.

Training:

- Judges participate in judicial training seminars.

### **III. Enforcement Phase**

- Procedures that may be used to enforce a return order:
  - Directions by a judicial or administrative authority to make arrangements for return
  - Measures for the immediate execution of final orders
- The court has responsibility for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, the applicant generally must apply for enforcement. However, the judge may commence proceedings ex officio if he/she believes this in the child's best interests.
- The merits of the proceedings for return cannot be reviewed in enforcement proceedings.
- Coercive measures that are available to enforce a return order: removal of the child from the abducting party; pecuniary measures.

### **IV. Mediation**

- Mediation can be used for: return / non-return of a child following an alleged wrongful removal / retention; custody; access / contact; relocation; child support; property disputes on relationship breakdown.
- Mediation services available in return cases: Private mediation services; mediation services provided by NGOs.
- Lists of mediators are available through [www.mediatorenliste.justiz.gv.at](http://www.mediatorenliste.justiz.gv.at).
- The costs of mediation generally must be borne by the parties. However, funding may be granted by the Ministry of Family and Youth (BMFJ).
- Mediation is available only after an application has been filed in the relevant court or administrative authority.
- Where legal proceedings have commenced, such proceedings can be suspended while mediation is undertaken, but only for as short a time as possible.
- There are no legal restrictions on the content of mediated agreements regarding family law matters.
- To make a mediated agreement enforceable: (1) the agreement must be notarised, and (2) the district court in family matters must approve the agreement.



### **Annex 3: Canada (Ontario)**

Information below is based upon Canada's 2017 Country Profile.

Number of return cases received in 2015: 22

Average number of days for Central Authority phase in 2015: 64

Average number of days for judicial phase in 2015: 45

#### **I. Central Authority Phase**

Central Authority operations:

- Professions represented in the Central Authority: civil servants and lawyers.

Applications for return:

- The application form of the requesting State is accepted.
- The Central Authority accepts applications and accompanying documentation transmitted by electronic means.
- The Central Authority requires a written authorisation empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where information provided is incomplete, the Central Authority will begin processing the application and will immediately inform the requesting Central Authority of what additional information is required to complete the request.
- In seeking the voluntary return of the child, a letter is sent to alleged abducting parent and monitored for two weeks for response before proceeding with the return action.

Locating the child:

- Return proceedings cannot commence before the child is located.
- The Central Authority requires information from the applicant as to why he / she believes the child is in Ontario.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Information maintained by other government agencies
  - Police
- Training includes updates provided as required on legal developments related to the Convention.

#### **II. Judicial Phase**

Organisation of competent authorities:

- Ontario has not "concentrated jurisdiction" of courts in respect of applications under the Convention.
- The competent courts are the Superior Court of Justice and the Ontario Court of Justice.
- The judges who decide return applications are specialists in family law.

Legal representation and assistance:

- Canada has made a reservation to Article 26 of the Convention.
- The Central Authority does not provide legal advice regarding return applications. However, the Central Authority will provide information that is of a general nature about laws and procedures.
- Legal representation is not required in return proceedings, but is recommended.
- Qualified applicants can receive free or reduced rate legal assistance.
- Such legal assistance covers court fees.

- Free or reduced rate legal assistance is available for the appeal of decisions, depending upon an assessment of the merits of the case and / or the means of the individual concerned.
- Free or reduced rate legal assistance is not available for enforcement proceedings.

#### Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings:
  - Procedural rules
  - Hague protocol
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): more than 12 weeks.
- The applicant is not required to participate in the return proceedings, but it is advisable.
- The applicant may participate in return proceedings from outside through a legal representative.
- There is always a hearing to decide the return application.
- Oral evidence can be received in return proceedings in limited circumstances only.
- In cases where the child is to be heard, the child's representative or counsel is contacted to ensure the matter is dealt with in a timely manner.

#### Appeals:

- No leave is required for the initial appeal to the Court of Appeal of Ontario. The second level of appeal is to the Supreme Court of Canada, which requires leave.
- Either party to the proceedings can initiate the appeal process.
- A return order can be suspended pending an appeal at the request of either party.
- An appeal to the Court of Appeal must be filed within 30 days from the date of the order.
- Generally, appeals are filed and decided within 3 to 6 months.

#### Direct judicial communications:

- The member of the International Hague Network of Judges designated for Canada: Associate Chief Justice Marianne Rivoalen, Court of Queen's Bench (Family Division) of Manitoba; Justice Louis Lacoursière, Québec Superior Court (Civil Law); Associate Chief Justice Lawrence I. O'Neil, Supreme Court (Family Division) of Nova Scotia (Common Law).
- No legislative basis is needed for judges to engage in direct judicial communications.

#### Training:

- Judicial training includes participation in judicial training seminars.
- In addition, the Canadian National Judicial Institute has developed a one day family law Judicial Education Module designed to help Canadian judges dealing with challenging cross-border custody cases that arise more and more often in their daily work.

### **III. Enforcement Phase**

- Procedures that may be used to enforce a return order:
  - Directions by a judicial or administrative authority to make arrangements for return
  - Measures for the immediate execution of final orders
  - Issue of a warrant for the apprehension or detention of the child
  - Authority for coercive detention or use of force
- The court and police share responsibility for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, the applicant must apply for enforcement.
- The merits of the proceedings for return can be reviewed in enforcement proceedings.

- Coercive measures that are available to enforce a return order: intervention by government agency (*e.g.*, police, social welfare); removal of the child from the abducting party; criminal charges; an order placing the child under supervision.

#### **IV. Mediation**

- Mediation can be used for: custody; access / contact; child support; property disputes on relationship breakdown.
- There are no mediation services / structures available where an incoming application has been received for the return of a child, nor are other forms of ADR available in such matters.

## Annex 4: Canada (Quebec)

Information below is based upon Canada's 2017 Country Profile.

Number of return cases received in 2015: 10

Average number of days for Central Authority phase in 2015: 9

Average number of days for judicial phase in 2015: 59

### I. Central Authority Phase

Central Authority operations:

- The Central Authority has dedicated staff who deal only with 1980 Hague Child Abduction Convention applications and related issues.
- Professions represented in the Central Authority: civil servants.

Applications for return:

- The application form developed by Quebec or the application form of the requesting State is accepted.
- The Central Authority accepts applications and accompanying documentation transmitted by electronic means. However, the original documents must be sent by post.
- The Central Authority requires a power of attorney empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where information provided is incomplete, the Central Authority will begin processing the application and will immediately inform the requesting Central Authority of what additional information is required to complete the request.
- In seeking the voluntary return of the child, a letter is sent to the taking parent or to his or her lawyer. This does not preclude pursuing the assessment of the applicant's request and assisting him or her in finding a lawyer to commence legal proceedings for the return of the child if voluntary return is not possible.

Locating the child:

- Return proceedings cannot commence before the child is located.
- The Central Authority requires the following information from the applicant:
  - Evidence that the child entered Quebec
  - Information as to why it is believed that the child is in Quebec
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Information maintained by other government agencies
  - Police (local or RCMP)
- Training is provided as required for Central Authority staff and updates are provided as required on legal developments related to the Convention.

### II. Judicial Phase

Organisation of competent authorities:

- Quebec has not "concentrated jurisdiction" of courts in respect of applications under the Convention.
- The competent courts are the Superior Court (58 districts, 186 judges) and the Court of Appeal (2 districts, 30 judges).
- Return applications are usually heard by judges with experience in family law.

#### Legal representation and assistance:

- Canada has made a reservation to Article 26 of the Convention.
- The Central Authority does not provide legal advice regarding return applications. However, the Central Authority will provide information that is of a general nature about laws and procedures.
- Legal representation is not required in return proceedings, but is recommended.
- Qualified applicants can receive free or reduced rate legal assistance.
- Such legal assistance covers: translation; interpreters; service of documents; court fees.
- Free or reduced rate legal assistance is available for the appeal of decisions.
- Free or reduced rate legal assistance is available for enforcement proceedings.

#### Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings: Judges assigning cases for trial are aware of the requirement to act expeditiously in return applications.
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): 6 to 12 weeks.
- The applicant is generally required to participate in the return proceedings, because of the opposing party's right to cross examine the applicant on the affidavit he/she provided.
- The applicant may participate in return proceedings from outside through a tele-conference or legal representative.
- There is always a hearing to decide the return application.
- Oral evidence will always be received in return proceedings.
- In cases where the child is to be heard, this occurs at the time of the hearing on the application for return, so there are no delays.

#### Appeals:

- No leave is required for the initial appeal to the Court of Appeal of Quebec. The second level of appeal to the Supreme Court of Canada requires leave.
- There is an expedited procedure of appeal for Hague return cases: filing a memorandum rather than a brief (shorter delays).
- Either party to the proceedings can initiate the appeal process.
- A return order is automatically suspended pending an appeal.
- An appeal to the Court of Appeal must be filed within 30 days from the date of the judgment.
- Generally, appeals are filed and decided within 3 to 6 months.

#### Direct judicial communications:

- The member of the International Hague Network of Judges designated for Canada: Associate Chief Justice Marianne Rivoalen, Court of Queen's Bench (Family Division) of Manitoba; Justice Louis Lacoursière, Québec Superior Court (Civil Law); Associate Chief Justice Lawrence I. O'Neil, Supreme Court (Family Division) of Nova Scotia (Common Law).
- No legislative basis is needed for judges to engage in direct judicial communications.

#### Training:

- Judicial training includes training through a dedicated judicial studies board and participation in judicial training seminars.
- There are regular meetings between judges of the Superior Court and the Court of Appeal and the designated judge for the International Hague Network (civil law).
- In addition, the Canadian National Judicial Institute has developed a one day family law Judicial Education Module designed to help Canadian judges dealing with challenging cross-border custody cases that arise more and more often in their daily work.

### **III. Enforcement Phase**

- Procedures that may be used to enforce a return order:
  - Directions by a judicial or administrative authority to make arrangements for return
  - Measures for the immediate execution of final orders
- No one body has general responsibility for exercising supervision over the process of enforcement. The Central Authority cooperates where necessary to ensure the safe return of the child
- Where parties do not voluntarily comply with a return order, it is not necessary to commence additional proceedings to enforce the order.

### **IV. Mediation**

- Mediation can be used for: custody; access / contact; relocation; child support; property disputes on relationship breakdown.
- There are no mediation services / structures available where an incoming application has been received for the return of a child, nor are other forms of ADR available in such matters.

## Annex 5: Chile

Information below is based upon Chile's 2011 Country Profile and the 2016 Regulation.<sup>4</sup>

Number of return cases received in 2016: information not available<sup>5</sup>

Average number of days for Central Authority phase in 2016: 45

Average number of days for judicial phase in 2016: 90

### I. Central Authority Phase

Central Authority operations:

- The Central Authority does not have a dedicated staff who deals only with 1980 Hague Child Abduction Convention applications and related issues.
- The profession represented in the Central Authority is civil servants (lawyers and social workers).

Applications for return:

- The CA accepts both its form and the one developed by the requiring State.
- The CA accepts an application and accompanying documentation transmitted by electronic means but any documentation sent electronically might be objected to by the court, since the documents are not the original ones. Nevertheless, documents transmitted by electronic means have been accepted in several cases based on articles 23 and 30 of the Convention.
- The CA requires that the form include a written authorization empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where the information provided is incomplete the Central Authority will begin processing the application and will immediately inform the requesting Central Authority of what additional information is required to complete the request.
- In order to secure the voluntary return of a child allegedly wrongfully removed or retained, the CA contacts the alleged abducting party to seek a voluntary return only when the applicant allows the CA to do so and when no risk of escape is envisaged.

Locating the child:

- Return proceedings cannot commence before the child is located.
- The applicant should provide any available information on the child's whereabouts (any kind of address details), because court venue depends on the location of the child.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Information maintained by other government agencies (*e.g.*, immigration, social welfare)
  - Police
  - INTERPOL
  - Court orders to compel the production of information on the whereabouts of the child

Training:

- Training is provided as required for Central Authority staff.

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<sup>4</sup> A new Regulation entered into force in March 2016 to improve procedures in Chile.

<sup>5</sup> For Chile, 2016 statistics (estimates provided for the March 2017 Panama meeting) are used because they reflect more accurately current procedures in that State (see the new regulation described in *supra* note 4), which has significantly reduced timeframes in comparison with former procedure.

## II. Judicial Phase

- Chile has no concentration of jurisdiction.
- Judges dealing with child abduction cases are family judges.

Legal representation and assistance:

- The Central Authority provides legal advice to parties regarding return applications.
- Legal representation is required in return proceedings and is provided by the Central Authority for the first instance, appeal and enforcement stages.
- The Central Authority represents both the State and the applicant in return proceedings.
- The applicant is not required to complete an application form for free or reduced rate legal assistance.
- Legal assistance covers the following costs:
  - Service of documents
  - Costs associated with locating the child
  - Court fees

Procedures:

- Chile has adopted procedural rules to assist with the effective operation of the Convention: Act 205-2015, issued by the Supreme Court.
- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings (Act 205-2015):
  - Short terms for the proceeding phases
  - Limitation of judicial remedies
  - Limitation of appeal instances
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): between 6 and 12 weeks.
- The applicant is not generally required to participate in the return proceedings.
- The applicant can participate in return proceedings through the Central Authority. Translation costs must be absorbed by the applicant or the requesting CA. Interpretation costs must be absorbed by the applicant.
- Oral evidence will always be received in return proceedings
- Hearing the child: The child is heard depending on his/her age and degree of maturity. The child is heard in private by the judge with the assistance of a psychologist during the first hearing.

Appeals:

- There is only one level of appeal.
- Either party to the proceedings can initiate the appeal process.
- Leave to appeal is not required.
- A return order is automatically suspended pending an appeal.
- An appeal must be filed within 5 days of the date the decision was notified to the parties.
- Generally, appeals are filed and decided within 3 months.
- Applicants can participate in the appeal process only through the CA.

Direct judicial communications:

- The member of the International Hague Network of Judges designated for Chile: Hernán Gonzalo López Barrientos.
- No legislative basis is needed for judges to engage in direct judicial communications. Nevertheless, the Procedural Law foresees the designation of a Network Judge to facilitate direct judicial communications between local and foreign judges.



Training:

- Judicial training includes participation in judicial training seminars.

### **III. Enforcement Phase**

- Procedures that may be used to enforce a return order:
  - Measures for the immediate execution of final orders
  - Issue of a warrant for the apprehension or detention of the child
  - Authority for coercive detention or use of force
- The Central Authority has responsibility for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, it is not necessary to commence additional proceedings to enforce the order.

### **IV. Mediation**

- There are no mediation services available for return cases. Nevertheless, the Procedural Law foresees in-court conciliation during the hearing and an attempt by the Central Authority to reach a voluntary return during the administrative phase when requested by the applicant.

## Annex 6: Germany

Information below is based upon Germany's 2017 Country Profile.

Number of return cases received in 2015: 172

Average number of days for Central Authority phase in 2015: 93

Average number of days for judicial phase in 2015: 82

### I. Central Authority Phase

Central Authority operations:

- The Central Authority has dedicated staff who deal only with 1980 Hague Child Abduction Convention applications and related issues.
- Professions represented in the Central Authority: civil servants (including legal advisors), lawyers, social workers, mediators.

Applications for return:

- No particular form for the application is required. See Germany's Country Profile, section 6.2 b), for the information that must be included.
- A signed application can be transmitted by electronic means. Original documents are required for applications for legal aid.
- If the application is incomplete the German Central Authority will normally take steps to locate the child and inform the requesting Central Authority of what additional information is required. In rare cases, *e.g.*, where it is uncertain if the child is in Germany at all, the requesting Central Authority will be asked to provide further information before the German Central Authority proceeds with the application.
- Unless requested otherwise by the applicant, a letter seeking the voluntary return of the child and information on mediation are sent to the alleged abducting party at the same time as the application is filed with the court. If the voluntary return or mediation succeeds, the court application can be withdrawn.

Locating the child:

- Return proceedings cannot commence before the child is located.
- The applicant should provide any available information on the child's whereabouts (any kind of address details), because court venue depends on the location of the child.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Population register (free of charge)
  - Information maintained by other government agencies (*e.g.*, immigration, social welfare) (free of charge)
  - Police (generally free of charge; in exceptional cases where locating the child is very laborious, the police may impose expenses upon the applicant)
  - INTERPOL (free of charge)
  - Court orders to compel the production of information on the whereabouts of the child (costs are part of the general costs of the proceedings)

Training:

- Training is provided as required for responsible authorities, and updates as required on legal developments related to the Convention provided to staff responsible for its implementation.

## II. Judicial Phase

Organisation of competent authorities:

- Germany has “concentrated jurisdiction” of courts in respect of applications under the Convention: 22 first instance courts (about 50 judges) and 22 second instance courts (about 90 judges).
- The competent German courts and their contact details can be found on the website of the German Central Authority.
- The judges or administrative authorities who decide return applications are specialists in family law or international child abduction.

Legal representation and assistance:

- Germany has made a reservation to Article 26 of the Convention.
- The Central Authority does not provide legal advice regarding return applications. However, the Central Authority will provide information that is of a general nature about laws and procedures.
- Legal representation is not required in return proceedings, but is recommended. The Central Authority arranges legal representation by private lawyers. The Central Authority is the representative by operation of law and files the application with the court. Thereafter the Central Authority assigns a private lawyer to represent the applicant at the court hearings and to conduct proceedings thenceforth.
- The applicant is required to complete an application form for free or reduced rate legal assistance. Eligibility depends upon the applicant’s income and assets, and the likelihood of success of the proceedings.
- Legal assistance covers the following costs:
  - Translation (other than the application)
  - Interpreters (included in court fees, if applicable)
  - Service of documents
  - Court fees (if applicable)
  - The applicant’s lawyer fees (if the applicant loses, he or she must bear the lawyer fees of the other party)
- Free or reduced rate legal assistance is available for appeals if the applicant qualifies.
- Free or reduced rate legal assistance is available for enforcement proceedings if the applicant qualifies.

Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings:
  - According to section 38 of the International Family Law Procedure Act, the court shall deal with proceedings for the return of a child with priority at all instances.
  - Except in the case of Article 12 paragraph 3 of the Hague Child Abduction Convention there shall be no stay of the proceedings.
  - The court shall apply all measures needed to expedite the proceedings.
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): up to 6 weeks.
- The applicant is not generally required to participate in the return proceedings, but such participation is advisable.
- Facilities are available to enable the applicant to participate in return proceedings from outside by video-conference or through a legal representative.
- There is always a hearing to decide the return application.
- Oral evidence can be received in return proceedings in limited circumstances only: if evidence is available on site.
- Hearing the child: Normally the court will schedule only one oral hearing, and the child is heard by the judge on that day immediately before the hearing.

#### Appeals:

- There is only one level of appeal (instead of the usual availability of two levels). The appeal is filed with the court of first instance, and is then transferred to the second instance court.
- Appeals in Hague return cases are allocated priority.
- Either party to the proceedings or the Central Authority can initiate the appeal process. The right of complaint against a decision ordering the return of a child shall vest only in the person opposing the application, in the child, so far as he or she has reached the age of 14 years, and in the Youth Welfare Office concerned.
- Leave to appeal is not required.
- A return order is automatically suspended pending an appeal.
- An appeal must be filed within two weeks of the date the decision was notified in writing to the parties.
- Generally, appeals are filed and decided within 3 months.

#### Direct judicial communications:

- The members of the International Hague Network of Judges designated for Germany: Martina Erb-Klünemann and Sabine Brieger.
- No legislative basis is needed for judges to engage in direct judicial communications.

#### Training:

- Judicial training includes sending a basic package of information on the 1980 Convention to judges and participation in judicial training seminars.

### III. Enforcement Phase

- Procedures that may be used to enforce a return order:
  - Directions by a judicial or administrative authority to make arrangements for return
  - Measures for the immediate execution of final orders
  - Issue of a warrant for the apprehension or detention of the child
  - Authority for coercive detention or use of force
  - The court can impose a coercive fine, and in the event of such fine not being recoverable or such fine offering no prospect of success, the court can order coercive detention.
  - Immediately along with the issuing of the return order the court indicates that it has the power to grant coercive measures if the obligated parent does not comply with the return order.
- The court / administrative authority, with assistance as needed from the Central Authority, has responsibility for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, the courts shall carry out enforcement proprio motu. To be able to do so, facts have to be brought to their attention, that is to say they have to be informed that the abducting party did not voluntarily comply with the return order.
- The merits of the proceedings for return cannot be reviewed in enforcement proceedings.
- Coercive measures that are available to enforce a return order: intervention by government agency (e.g., police, social welfare); removal of the child from the abducting party; imprisonment; pecuniary measures; an order placing the child under supervision.

### IV. Mediation

- Mediation can be used for all family matters, including return / non-return of a child following an alleged wrongful removal / retention; custody; access / contact; relocation; child support; property disputes on relationship breakdown.
- Mediation services available in return cases: Private mediation services; mediation services within the judicial system; mediation services provided by MiKK e.V., an NGO.

- Lists of mediators are available through *Bundes-Arbeitsgemeinschaft für Familien-Mediation* (BAFM).
- The costs of mediation must be borne by the parties.
- Mediation is available at all stages of the return process, including prior to any application and as a preventive measure where necessary.
- Where legal proceedings have commenced, in general such proceedings cannot be suspended while mediation is undertaken, but if the parties agree the court can grant a stay.
- There are no legal restrictions on the content of mediated agreements regarding family law matters.
- According to German domestic law there are no legal restrictions on the content of mediated agreements regarding family law matters (with the exception of mandatory rules). However, if according to German private international law foreign legal provisions are applicable, these may provide for legal restrictions.
- To make a mediated agreement enforceable, approval of the agreement must be obtained from the local family court.

## Annex 7: Netherlands

Information below is based upon the Netherlands' 2017 Country Profile.

Number of return cases received in 2015: 31

Average number of days for Central Authority phase in 2015: 72

Average number of days for judicial phase in 2015: 85

### I. Central Authority Phase

Central Authority operations:

- Professions represented in the Central Authority: civil servants (legal advisors) and lawyers.

Applications for return:

- The Netherlands accepts: (1) the Model Application Form; (2) the application form developed by the Netherlands; or (3) the application form of the requesting State.
- The Central Authority accepts an application and accompanying documentation transmitted by electronic means, but the original documents must be sent by post.
- The Central Authority requires a written authorisation empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where information provided is incomplete, the Central Authority is unable to process the application but will immediately inform the requesting Central Authority of what additional information is required before further action can be taken.
- When an attempt is made to secure the voluntary return of the child, a deadline of two weeks is set for the alleged abducting party to respond.

Locating the child:

- Return proceedings can commence before the child is located if there is suspicion that the child is in the Netherlands.
- The applicant is asked for information as to why he / she believes the child is in the Netherlands.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Population register
  - Information maintained by other government agencies (Public Prosecution Service)
  - Police

Training:

- Training is provided as required for Central Authority staff and lawyers. Training also includes updates provided as required on legal developments related to the Convention.

### II. Judicial Phase

Organisation of competent authorities:

- The Netherlands has "concentrated jurisdiction" of courts in respect of applications under the Convention.
- The competent court is the Hague District Court.
- The judges or administrative authorities who decide return applications are specialists in family law and international child abduction.

Legal representation and assistance:

- The Netherlands has not made a reservation to Article 26 of the Convention.
- The Central Authority provides legal advice regarding return applications.

- Legal representation is required in return proceedings. The applicant is required to make his / her own arrangements for legal representation, but the Central Authority will refer applicants to the International Child Abduction Centre, which will provide applicants with a recommendation to specialized lawyers.
- Reduced rate legal assistance is available to qualified applicants. It covers the following costs: mediation; translation; interpreters; service of documents; court fees; lawyer costs.
- Reduced rate legal assistance is available for appeals.
- Reduced rate legal assistance is available for enforcement proceedings.

#### Procedures:

- Procedural rules have been adopted to ensure that the judicial and administrative authorities act expeditiously in return proceedings.
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): up to 6 weeks.
- The applicant is generally not required to participate in the return proceedings, but such participation is advisable.
- Facilities are available to enable the applicant to participate in return proceedings from outside by video-conference or through a legal representative.
- There is always a hearing to decide the return application.
- Oral evidence can be received in return proceedings only if no other evidence is available and the evidence is crucial for the decision.
- If the child is heard, that takes place immediately before the hearing of the parties in Court.

#### Appeals:

- There is a right of appeal to the Court of Appeal; leave is not necessary.
- There is an expedited procedure for Hague return cases: the Court of Appeal in The Hague has six weeks to take a decision.
- Either party to the proceedings can initiate the appeal process.
- A return order is automatically suspended pending an appeal.
- An appeal must be filed within two weeks from the date of the order.
- Generally, appeals are filed and decided within 3 months.

#### Direct judicial communications:

- The member of the International Hague Network of Judges designated for the Netherlands: Judge Annette C. Olland.
- Existing legislation provides a basis for judges to engage in direct judicial communications.

### **III. Enforcement Phase**

- To enforce a return order, the cooperation protocol regarding mandatory enforcement of return orders in international child abduction cases can be applied upon the initiative of the lawyer representing the applicant.
- The Public Prosecutor is responsible for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, it is not necessary to commence additional proceedings to enforce the order.

#### **IV. Mediation**

- Mediation can be used for: return / non-return of a child following an alleged wrongful removal / retention; custody; access / contact; relocation; child support; property disputes on relationship breakdown.
- Mediation services available in return cases: Mediation services provided by the Mediation Bureau within the International Child Abduction Centre, an NGO.
- Information on mediation is available through the International Child Abduction Centre.
- If an individual qualifies for reduced rate legal assistance, this will include a part of the costs for mediation.
- Mediation is available before and after an application has been made to the relevant Central Authority and during a session in the court of first instance.
- When no mediation has taken place prior to the start of the proceedings, parties are offered the opportunity of mediation during the proceedings at the court of first instance. If they accept, the court proceedings can be suspended.
- There are no legal restrictions on the content of mediated agreements regarding family law matters.
- To make a mediated agreement enforceable, its approval by the competent court is needed.



## Annex 8: New Zealand

Information below is based upon New Zealand's 2012 Country Profile.

Number of return cases received in 2015: 31

Average number of days for Central Authority phase in 2015: 18

Average number of days for judicial phase in 2015: 87

### I. Central Authority Phase

Central Authority operations:

- The Central Authority has dedicated staff who deal only with 1980 Hague Child Abduction Convention applications and related issues.
- Professions represented in the Central Authority: civil servants (including legal advisors).

Applications for return:

- The Model Application Form or the application form of the requesting State is accepted.
- The Central Authority will initiate proceedings on the receipt of an electronic copy on the understanding that the original documentation will be forwarded for filing in court.
- The Central Authority requires a written authorisation empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where information provided is incomplete, the Central Authority will begin processing the application and will immediately inform the requesting Central Authority of what additional information is required to complete the request. A request may be progressed if there is sufficient information or documentation to make a *prima facie* case.
- Alternative dispute resolution processes including mediation run parallel to the court process, minimising any delay. If attempts to reach an amicable resolution fail the matter proceeds to a hearing.

Locating the child:

- Return proceedings can commence before the child is located.
- Evidence is required that the child entered the State, and the applicant must state why he / she believes the child is in the State.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Information maintained by other government agencies
  - Police
  - INTERPOL
  - Court orders to compel the production of information on the whereabouts of the child

Training:

- Training is provided as required for Central Authority staff, including lawyers. Training also includes updates provided as required on legal developments related to the Convention.

### II. Judicial Phase

Organisation of competent authorities:

- New Zealand has not "concentrated jurisdiction" of courts in respect of applications under the Convention.
- The competent court is the Family Court, a division of the District Court of New Zealand. Approximately 46 judges can hear return applications under the Convention.
- The judges or administrative authorities who decide return applications are specialists in family law.

#### Legal representation and assistance:

- New Zealand has made a reservation to Article 26 of the Convention.
- The Central Authority does not provide legal advice regarding return applications. However, the Central Authority will refer the applicant to the appropriate person or authority to obtain legal advice, and will provide information that is of a general nature about laws and procedures.
- Legal representation is required in return proceedings. The Central Authority arranges free legal representation by private lawyers.
- Legal assistance covers the following costs: translation; interpreters; service of documents; costs associated with locating the child; court fees.
- Public funding of appeals is based on an assessment of the decision and consideration of the merit of an appeal.
- Free legal assistance is available for enforcement proceedings.

#### Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings:
  - The Care of Children Act 2004, section 107 (1) states a court must, so far as practicable, give priority to the proceedings in order to ensure that they are dealt with speedily.
  - Section 107(3) says the Central Authority may request a statement of the reasons why the application has not been determined within a 6 week period from the date of filing in the court, and the registrar of the court must, as soon as practicable, supply the statement to the Authority.
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): 6 to 12 weeks.
- The applicant is required to provide formal responses in writing to any matters raised by the taking parent. Cases are generally determined by way of submissions only and neither party is required to be present or give evidence at the hearing.
- Facilities are available to enable the applicant to participate in return proceedings from outside by video-conference, telephone or through a legal representative.
- There is always a hearing to decide the return application.
- Oral evidence can be received in return proceedings in limited circumstances only.
- The question of whether a report on the child is necessary or may assist the Court is considered at an early stage of the proceedings.

#### Appeals:

- There is a right of appeal to the High Court, the first appellate level. Leave must be granted for appeals to the Court of Appeal or Supreme Court.
- Appeals in Hague return cases are allocated priority.
- Either party to the proceedings can initiate the appeal process.
- A return order can be suspended pending an appeal at the request of either party and after determination by the judge.
- An appeal must be filed within 21 days of the date on which the final order is sealed or the date on which leave or special leave was granted.
- Generally, appeals are filed and decided within 3 months.

#### Direct judicial communications:

- The member of the International Hague Network of Judges designated for New Zealand: Principal Family Court Judge Peter Boshier.
- No legislative basis is needed for judges to engage in direct judicial communications.

Training:

- Judicial training includes training through a dedicated judicial studies board and participation in judicial training seminars.

### III. Enforcement Phase

- Procedures that may be used to enforce a return order:
  - Directions by a judicial or administrative authority to make arrangements for return
  - Measures for the immediate execution of final orders
  - Issue of a warrant for the apprehension or detention of the child
- The Central Authority, court and police share responsibility for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, the Central Authority or the applicant must apply for enforcement.
- The merits of the proceedings for return cannot be reviewed in enforcement proceedings.
- Coercive measures that are available to enforce a return order: intervention by government agency (*e.g.*, police, social welfare); removal of the child from the abducting party.

### IV. Mediation

- Mediation can be used for: return / non-return of a child following an alleged wrongful removal / retention; custody; access / contact; relocation; child support; property or financial disputes on relationship breakdown.
- Mediation services available in return cases: Private mediation services; mediation services within the judicial or administrative system.
- Lists of mediators are available through the local Family Court.
- The costs of mediation must be borne by the parties. A person may qualify for reduced fees or subsidised costs if the matter is referred to dispute resolution by the Court.
- Mediation is available at all stages of the return process, including prior to any application and as a preventive measure where necessary.
- Where legal proceedings have commenced, such proceedings cannot be suspended while mediation is undertaken.
- There are no legal restrictions on the content of mediated agreements regarding family law matters.
- To make a mediated agreement enforceable, the parties may seek to have some or all of the terms of the agreement embodied in an order of the court. The order may be enforced to the extent possible under domestic law.

## Annex 9: UK (England and Wales)

Information below is based upon the UK's 2011 Country Profile.

Number of return cases received in 2015: 261

Average number of days for Central Authority phase in 2015: 13

Average number of days for judicial phase in 2015: 76

### I. Central Authority Phase

Central Authority operations:

- The Central Authority has dedicated staff who deal only with 1980 Hague Child Abduction Convention applications and related issues.
- Professions represented in the Central Authority: civil servants.

Applications for return:

- The application form of the requesting State is accepted.
- The Central Authority accepts an application and accompanying documentation transmitted by electronic means; original documents must follow.
- The Central Authority requires a written authorisation empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- In some cases the Central Authority can proceed with an application where the information provided is incomplete, depending upon what type of information is missing. The Central Authority can proceed with an incomplete application if it has sufficient information that the applicant has a *prima facie* case and the documentation necessary for the legal representative to issue the return application at the court is provided.
- The question of voluntary return is generally considered after the return application has been referred to a panel solicitor by the Central Authority.

Locating the child:

- Return proceedings can commence before the child is located in certain circumstances: There has to be evidence that there is a real possibility that the child is in the jurisdiction. The child's precise whereabouts need not be known for an application for the proceedings to commence. A location order can be applied for within the proceedings.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Private location services. The applicant needs to initiate this through the legal representative. The cost of the enquiry agent may be funded under the applicant's legal aid certificate.
  - Court orders to compel the production of information on the whereabouts of the child.

Training:

- Training is provided as required for Central Authority staff. Training also includes updates provided as required on legal developments related to the Convention, and participation in conferences and seminars.

### II. Judicial Phase

Organisation of competent authorities:

- The UK has concentrated jurisdiction in respect of applications under the Convention. The competent court is the Family Division of the High Court of Justice, which has 19 judges.
- The judges or administrative authorities who decide return applications are specialists in either family law or international child abduction.

#### Legal representation and assistance:

- The UK has made a reservation to Article 26 of the Convention.
- The Central Authority does not provide legal advice regarding return applications. However, the Central Authority will refer the applicant to the appropriate person or authority to obtain legal advice, and will provide information that is of a general nature about laws and procedures.
- Legal representation is not required in return proceedings, but is recommended. Public funding for return applications is non-means and non-merits tested (free) for the applicant (but not for the alleged abducting party).
- Legal assistance covers the following costs: mediation; translation; interpreters; service of documents; costs associated with locating the child; court fees.
- Free legal assistance for appeals depends upon an assessment of the merits of the case. The applicant must also remain financially eligible for public funding.
- Free legal assistance is available for enforcement proceedings.

#### Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings:
  - In the Family Procedure Rules 2010, judges are given wide case management powers of the court and in specific procedural steps such as adjournments are to be limited to a maximum of 21 days.
  - Listing Officers at the Court ensure that Convention returns cases are listed for hearing urgently; often "at risk".
  - The Convention work is undertaken by specialist judges and legal representatives.
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): up to 6 weeks.
- The applicant is required to give instructions to his or her legal representative. Attendance of the applicant at hearings is normally excused save in limited cases such as where the applicant is required to give oral evidence.
- Facilities are available to enable the applicant to participate in return proceedings from outside by video-conference, telephone or through a legal representative.
- There is always a hearing to decide the return application.
- Oral evidence can be received in return proceedings at the discretion of the judge hearing the case.
- In cases where the child is to be heard, judicial management includes directions that a report on the child's wishes and feelings be prepared urgently.

#### Appeals:

- In return proceedings there is no automatic right of appeal. Permission to appeal is required.
- Appeals in Convention cases are given priority.
- Either party to the proceedings can initiate the appeal process.
- A return order can be suspended pending an appeal at the request of either party and after determination by the judge.
- An appeal must be filed within 21 days of the date of the decision.
- Generally, appeals are filed and decided within 3 months.

#### Direct judicial communications:

- The members of the International Hague Network of Judges designated for the UK (England and Wales): Lady Justice Jill BLACK, DBE, Judge of the Court of Appeal, The Royal Courts of Justice, London; Lord Justice Andrew MOYLAN, Judge of the Court of Appeal, The Royal Courts of Justice, London.
- No legislative basis is needed for judges to engage in direct judicial communications.

Training:

- Judicial training includes training through a dedicated judicial studies board and participation in judicial training seminars.

### III. Enforcement Phase

- Directions by a judicial or administrative authority are used to make arrangements for return.
- The court / administrative authority is generally responsible for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, the applicant must apply for enforcement.
- The merits of the proceedings for return cannot be reviewed in enforcement proceedings.
- Coercive measures that are available to enforce a return order: intervention by government agency (*e.g.*, police, social welfare); removal of the child from the abducting party; imprisonment; pecuniary measures.

### IV. Mediation

- Mediation can be used for: return / non-return of a child following an alleged wrongful removal / retention; custody; access / contact; relocation; child support; property or financial disputes on relationship breakdown.
- Mediation services available in return cases: Private mediation services; mediation services provided by NGOs.
- Mediation is available through, *e.g.*: the Law Society of England and Wales; Resolution.
- If an individual qualifies for free or reduced rate legal assistance, this may cover the cost of mediation. Otherwise the costs of mediation must be borne by the parties.
- Mediation is available at all stages of the return process, including prior to any application and as a preventive measure where necessary.
- Where legal proceedings have commenced, such proceedings can be suspended while mediation is undertaken, subject to the court's approval.
- There are no legal restrictions on the content of mediated agreements regarding family law matters.
- To make a mediated agreement enforceable, the parties need to apply to the court for the terms of the mediated agreement to be incorporated into an Order of the Court.

## Annex 10: Uruguay

Information below is based upon Uruguay's 2017 Country Profile.

Number of return cases received in 2015: 12

Average number of days for Central Authority phase in 2015: 7

Average number of days for judicial phase in 2015: 123

### I. Central Authority Phase

Central Authority operations:

- Central Authority does not have dedicated staff who deal only with 1980 Hague Child Abduction Convention applications and related issues.
- The profession represented in the Central Authority is civil servants (lawyers/Private International Law experts).
- The Central Authority does not provide legal advice regarding return applications. However, the Central Authority will provide information that is of a general nature about laws and procedures, and will refer the applicant to the appropriate person or authority to obtain legal advice.

Applications for return:

- The CA accepts both its form and the one developed by the requiring State.
- The CA accepts an application and accompanying documentation transmitted by electronic means.
- The CA does not require a written authorization empowering it or a designated representative (*e.g.*, lawyer) to act on behalf of the applicant.
- Where the information provided is incomplete the Central Authority will begin processing the application and will immediately inform the requesting Central Authority of what additional information is required to complete the request.
- In order to secure the voluntary return of a child allegedly wrongfully removed or retained, the CA contacts the alleged abducting party to seek a voluntary return.

Locating the child:

- Return proceedings cannot commence before the child is located.
- Mechanisms or sources of information available to discover the whereabouts of the child:
  - Information maintained by other government agencies (*e.g.*, immigration, social welfare)
  - Police
  - INTERPOL
  - Court orders to compel the production of information on the whereabouts of the child (costs are part of the general costs of the proceedings)

Training:

- Training is provided as required for Central Authority staff.

### II. Judicial Phase

- Uruguay has adopted procedural rules to assist with the effective operation of the Convention: Act 18.895.
- Uruguay has concentration of jurisdiction in the first instance and appeal stages. This has been implemented by the Supreme Court through *Reglamento Acordada 7758, passed in 2012 (Regulation 7758)*.

- Judges dealing with a child abduction case must inform the Hague Network Judge of the initiation of the proceeding and send her a copy of the decision for statistical and follow-up purposes and also to keep the internal database and INCADAT updated (*Regulation 7758*).
- Legal representation is required in return proceedings. The Central Authority arranges legal representation by public defenders. The representation is for free for the first instance, appeal and enforcement stages (legal assistance covers service of documents and court fees).

#### Procedures:

- Measures taken to ensure that the judicial and administrative authorities act expeditiously in return proceedings (Act 18.895):
  - Short terms for the proceeding phases
  - Limitation of judicial remedies
  - Limitation of appeal instances
- The expected time from the commencement of the proceedings for return to a final order (excluding appeals): up to 6 weeks.
- The applicant is not generally required to participate in the return proceedings, but such participation is advisable.
- Facilities are available to enable the applicant to participate in return proceedings from outside by a legal representative. When a dvc takes place, the requested State absorbs its costs. Nevertheless, the requested State does not provide for interpretation or translation of documents.
- Oral evidence will always be received in return proceedings.
- Hearing the child: The child is heard always. The child is heard directly by the judge in the first hearing. Previously, the child is heard by the assigned public defender, and usually a psychological report is made by an expert.

#### Appeals:

- There is only one level of appeal (instead of the usual availability of two levels). The appeal is filed with the court of first instance, and is then transferred to the second instance court.
- Appeal judges have 4 days to decide on the return.
- Either party to the proceedings can initiate the appeal process.
- Leave to appeal is not required.
- A return order is automatically suspended pending an appeal.
- An appeal must be filed within 3 days of the date the decision was notified to the parties.
- Generally, appeals are filed and decided within 3 months.
- Applicants can participate in the appeal process through dvc or legal representation.

#### Direct judicial communications:

- The member of the International Hague Network of Judges designated for Uruguay: Lilian Bendahan Silvera.
- No legislative basis is needed for judges to engage in direct judicial communications. Nevertheless, the Procedural Law foresees the designation of a Network Judge to facilitate direct judicial communications between local and foreign judges.

#### Training:

- Regulation 7758 establishes that training will be held through the judicial school, the Republic University, and foreign academics, among others.



### III. Enforcement Phase

- Procedures that may be used to enforce a return order:
  - Directions by a judicial or administrative authority to make arrangements for return
  - Measures for the immediate execution of final orders
  - Authority for coercive detention or use of force
- The court / administrative authority has responsibility for exercising supervision over the process of enforcement.
- Where parties do not voluntarily comply with a return order, it is necessary to commence additional proceedings to enforce the order. It is the applicant who must apply for enforcement.
- The merits of the proceedings for return cannot be reviewed in enforcement proceedings.
- Coercive measures that are available to enforce a return order: intervention by government agency (*e.g.*, police, social welfare); removal of the child from the abducting party; criminal charges; imprisonment; pecuniary measures; an order placing the child under supervision.

### IV. Mediation

- There are no mediation services available for return cases. Nevertheless, the Procedural Law foresees in-court conciliation during the hearing and an attempt by the Central Authority to reach a voluntary return during the administrative phase.