

AUSTRIA

The applications

1. The number of applications

According to the Central Authority for Austria, they received 9 incoming return and 8 incoming access applications in 1999, making a total of 17 incoming applications. Interestingly, almost as many applications were for access as for return, while globally, just 17% of applications were for access. Additionally, they made 8 outgoing return and 1 outgoing access application in that year. Altogether, therefore, the Central Authority for Austria handled 26 new applications in 1999.

2. The Contracting States which made the applications

(a) *Incoming return applications*

Requesting States

	Number of Applications	Percent
Italy	4	44
UK - England and Wales	2	22
Canada	1	11
USA	1	11
Hungary	1	11
Total	9	100

The largest proportion of applications came from Italy, which is perhaps not surprising considering that they are neighbouring States. Similar trends have been found in relation to other neighbouring countries such as the USA and Mexico, and Australia and New Zealand. Nevertheless, it is interesting that there were no outgoing applications from Austria to Italy. In light of the historical relationship between the 2 States, it is also worth noting that there was 1 application from Hungary and 3 outgoing applications from Austria to Hungary. Conversely, no applications were received from Austria's largest neighbour, Germany.

(b) *Incoming access applications*

Requesting States

	Number of Applications	Percent
UK- England and Wales	2	25
USA	2	25
Canada	1	13
Germany	1	13
Italy	1	13
Switzerland	1	13
Total	8	100

England and Wales and the USA made two access applications each. No other State made more than one access application.

Combining return and access applications, most came from Italy. Interestingly, after England and Wales, more applications came from North America as opposed to European neighbours.

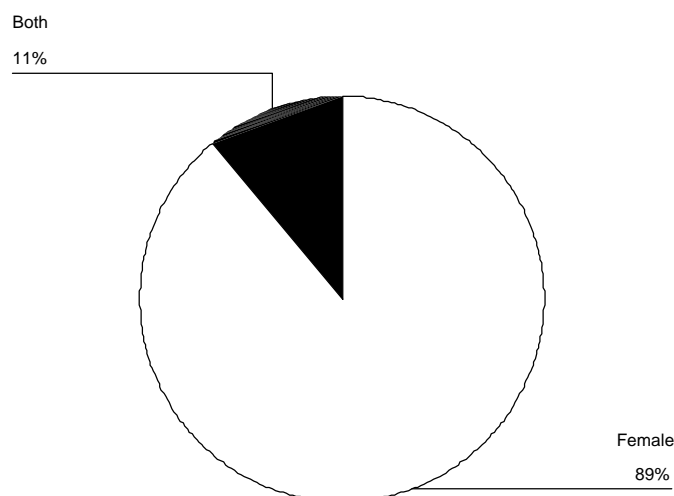
The taking person / respondent

3. The gender of the taking person / respondent

(a) *Incoming return applications*

Gender of the Taking Person

	Number	Percent
Female	8	89
Both	1	11
Total	9	100



The chart and table above show that 89% of taking persons in applications to Austria were female. This is higher than the global norm of 69%. Unusually, there were no applications involving a sole male taking person. Where the gender of the taking person is given as both, the taking persons were the child's grandparents.

(b) *Incoming access applications*

All respondents involved in incoming access applications to Austria were females.

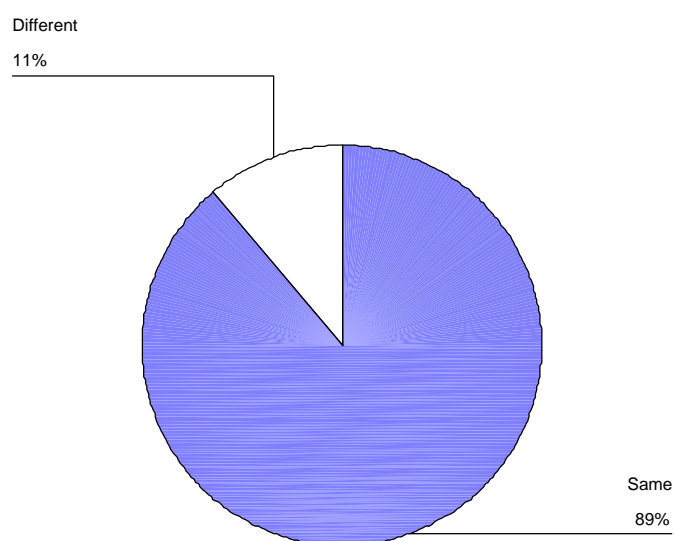
Interestingly, in both return and access applications, there were no applications which involved a sole male taking person / respondent.

4. The nationality of the taking person / respondent

(a) Incoming return applications

Taking Person Same Nationality as Requested State

	Number	Percent
Same Nationality	8	89
Different Nationality	1	11
Total	9	100

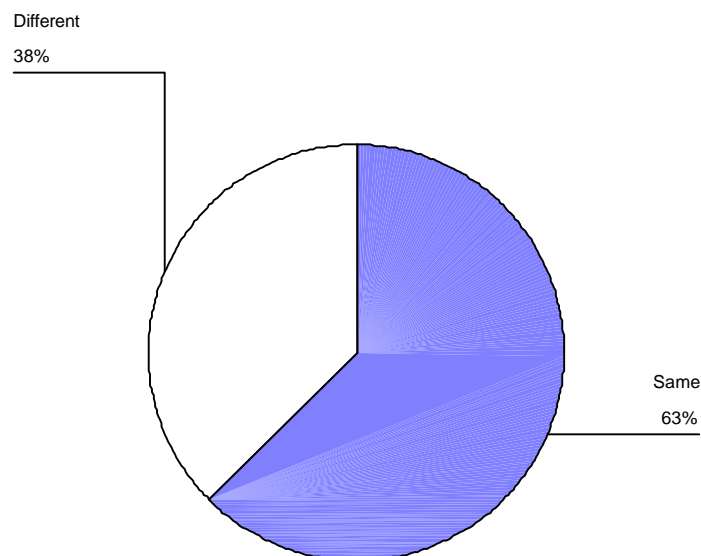


The chart and table above show that 89% of taking persons had the nationality of the requested State, in this case Austria. Globally, just 52% of taking persons were nationals of the requested State.

(b) Incoming access applications

Respondent Same Nationality as the Requested State

	Number	Percent
Same Nationality	5	63
Different Nationality	3	38
Total	8	100



The chart and table above show that 63% of respondents were Austrian nationals. As with return applications, this is a higher proportion than the global norm of 40%.

Combining return and access applications, 76% of taking persons / respondents in applications to Austria were Austrian nationals.

5. The gender and nationality of the taking person / respondent combined

(a) Incoming return applications

One of the female taking persons was not an Austrian national. However, the overwhelming majority of taking persons in applications to Austria, 78%, were females who were also Austrian nationals.

The children

6. The total number of children

There were 13 children involved in the 9 return applications and 13 children involved in the 8 access applications. Altogether, therefore, 26 children were involved in new incoming applications received by Austria in 1999. Interestingly, Austria is the only Contracting State in this analysis where there were as many children involved in access as return applications.

7. Single children or sibling groups

(a) Incoming return applications

Single Child or Sibling Group

	Number	Percent
Single Child	6	67
Sibling Group	3	33
Total	9	100

Number of Children

	Number	Percent
1 Child	6	67
2 Children	2	22
3 Children	1	11
Total	9	100

Globally, 63% of applications involved single children. In applications to Austria the proportion of single children was slightly higher at 67%.

(b) Incoming access applications

Single Child or Sibling Group

	Number	Percent
Single Child	4	50
Sibling Group	4	50
Total	8	100

Number of Children

	Number	Percent
1 Child	4	50
2 Children	3	38
3 Children	1	13
Total	8	100

Whereas globally, 69% of applications for access involved single children, the proportion in applications received by Austria was only 50%. This represents the converse of the situation in return applications, where the proportion of single children was marginally higher than the global norm.

8. The age of the children

(a) Incoming return applications

Age of the Children

	Number	Percent
0-4 years	5	39
5-9 years	6	46
10-16 years	2	15
Total	13	100

The proportion of children in each age category was similar to the global norms. There were however, slightly fewer older children with 15% being aged over 10 years as opposed to a global norm of 21%.

(b) Incoming access applications

Age of the Children

	Number	Percent
0-4 years	2	15
5-9 years	9	69
10-16 years	2	15
Total	13	100

As with return applications, there was a smaller proportion of children in the oldest age category, 15%, as against a global norm of 29%. Globally, the largest proportion of children, 50%, were in the 5 - 9 year old category. This proportion is larger in applications to Austria with 69% of children being aged between 5 and 9 years old.

9. The gender of the children

(a) Incoming return applications

Gender of the Children

	Number	Percent
Male	8	62
Female	5	38
Total	13	100

The proportions of male and female children differed from the global norms of 53% and 47% respectively, with a higher proportion of male children involved in applications to Austria.

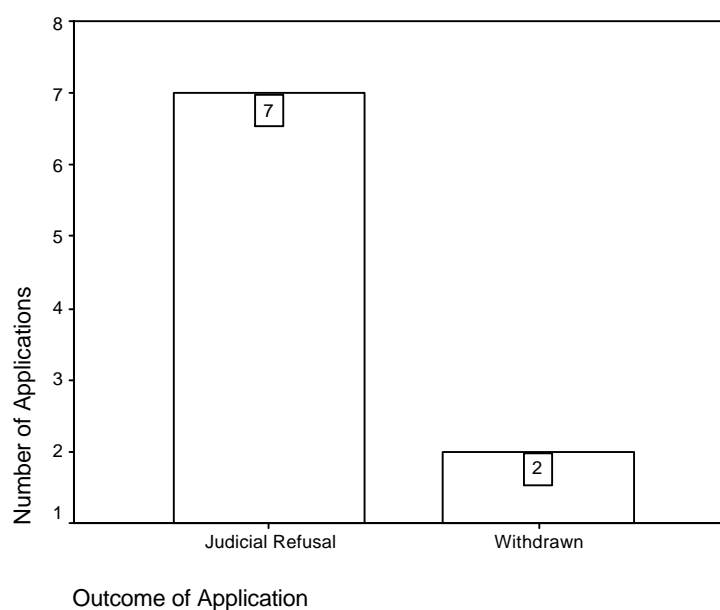
(b) Incoming access applications**Gender of the Children**

	Number	Percent
Male	6	46
Female	7	54
Total	13	100

There were proportionally more female children involved in access applications to Austria than the global norm of 50%.

The outcomes**10. Overall outcomes****(a) Incoming return applications****Outcome of Application**

	Number	Percent
Rejection	0	0
Voluntary Return	0	0
Judicial Return	0	0
Judicial Refusal	7	78
Withdrawn	2	22
Pending	0	0
Other	0	0
Total	9	100

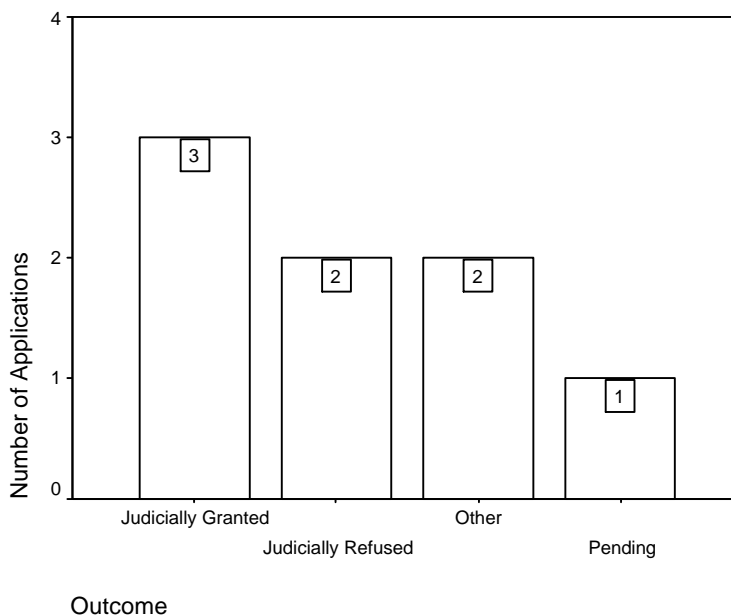


It is immediately noticeable that the vast majority of applications ended in the same outcome. No applications resulted in the return of the child, whereas globally, 50% of applications ended in a judicial or a voluntary return. There were also no pending cases or rejections, but 2 applications were withdrawn. The other 7 applications (78%), ended in a judicial refusal. When compared with the global norm of 11%, the proportion of judicial refusals is remarkable, and is far higher than any other Contracting State in this analysis. While the system in Austria appears to be court based with 78% of applications going to court, it will be noted that all court decisions resulted in a refusal to return the child.

(b) Incoming access applications

Outcome of the Application

	Number	Percent
Rejection by the Central Authority	0	0
Access Voluntarily Agreed	0	0
Access Judicially Granted	3	38
Access Judicially Refused	2	25
Pending	1	13
Withdrawn	0	0
Other	2	25
Total	8	100



Unlike return applications where all court decisions ended in a refusal, in 3 of the 5 court decisions regarding access, access was judicially granted. Overall, access was judicially granted in 38% of applications, whereas globally, 25% of applications were so concluded. As of June 30th 2001, 1 case was still pending.

11. The reasons for judicial refusal

(a) Incoming return applications

Reason for Judicial Refusal

	Number	Percent
Applicant had No Rights of Custody	2	29
Article 13 b	3	43
More Than One Reason	2	29
Total	7	100

The table above shows that the highest proportion of refusals (43%), were based on Article 13 b. The basis of one of the applications refused for more than one reason was that the applicant had no rights of custody, the child was not habitually resident in the relevant state and Article 13 b. The basis of the other application was that the applicant had no rights of custody and that the child, aged between 11 and 12 years old, objected. Globally, Article 13 b was used as a basis for refusing 22 applications, a proportion of 22% of all reasons for refusal. In applications to Austria this proportion was higher at 43%, but not as high as in applications to Sweden where Article 13 b was the basis for all 4 of the refused cases.

12. The reasons for judicial refusal and the gender of the taking person

(a) Incoming return applications

Count	Gender of the Taking Person		Total
	Female	Both	
Applicant had No Rights of Custody	2		2
Article 13b	3		3
More than one reason	1	1	2
Total	6	1	7

One application was refused where there were 2 taking persons. In the other 6 refusals the taking person was female. No applications to Austria involved a sole male taking person. Interestingly, all applications where Article 13 b succeeded as a basis for refusal, involved a female taking person who had Austrian nationality. There was an equal number of male and female children involved in these applications.

Speed

13. The time between application and outcome

(a) Incoming return applications

The mean average length of time for the 7 judicial refusals was 144 days. This is marginally faster than the global norm of 147 days. The fastest decision was made in 72 days whilst the slowest took 224 days.

(b) Incoming access applications

Timing to Judicial Decision

	Number	Percent
Over 6 months	4	80
3-6 months	1	20
Total	5	100

Unlike return applications which were handled relatively quickly, 80% of the court decisions in access applications took over 6 months to be decided. Globally, 71% of court decisions in access applications took over 6 months.

14. Appeals

(a) Incoming return applications

Interestingly, all applications to Austria were appealed. 6 appeals upheld first instance decisions to refuse return of the child, the other appeal overruled a first instance decision to return. This is a high proportion of appeals considering that globally just 14% of judicial decisions were appealed. Nevertheless, all these cases were considered quickly, taking an average of 144 days, compared with a global norm of 176 days.