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Analyse statistique des demandes déposées en 1999 en application de la Convention de La Haye du 25 octobre 1980 sur les aspects civils de l'enlèvement international d'enfants

établie par Professeur Nigel Lowe, Mlle Sarah Armstrong et Mlle Anest Mathias

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A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

drawn up by Professor Nigel Lowe, Ms Sarah Armstrong and Ms Anest Mathias

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for the attention of the Special Commission of March 2001

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PREFACE

Any review of the practical operation of a Convention such as that of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* should be conducted in the light of the best and most reliable information available. Particularly when comparing the functioning of the Convention in different States, it is important that data relied upon are comparable and objectively determined. With this in mind, the Permanent Bureau has for a number of years been encouraging States Parties to the 1980 Convention to submit annual statistics on a standard form. But these annual statistics, valuable though they are, present only part of the picture.

In order to provide the Special Commission of 2001 with further data concerning the operation of the 1980 Convention, the Permanent Bureau decided that it would be helpful to organise a more detailed analysis of all return and access applications arising within the Contracting States in the year 1999. The objective was to obtain a clearer profile of the types of cases which are typically being dealt with in the context of the 1980 Convention, to map their outcomes and to provide some information concerning the time it takes for cases to be processed by the different national systems.

Given the experience which the Cardiff University Centre for International Family Law Studies has in this field, the Permanent Bureau invited its Director, Professor Nigel Lowe, to undertake the research in consultation with the Permanent Bureau. Funding for the research was generously made available by the Nuffield Foundation. A questionnaire was agreed upon and on the basis of the responses from Central Authorities the following report was drawn up. The major part of the work has been carried out by Professor Lowe and his two able research associates, Sarah Armstrong and Anest Mathias. The Permanent Bureau has been involved in a consultative role and in providing some administrative assistance.

The Permanent Bureau would like to record its thanks to Professor Lowe and his two research associates, and to the Nuffield Foundation, as well as to two of its own researchers who helped with the project, Mariama Diallo and Alexandra Schluep. The Permanent Bureau would also like to extend its thanks to the many Central Authorities who co-operated in this project.

The report was first published in March 2001 as Preliminary Document No 3 for the attention of the Special Commission of March 2001. Since that time the authors have conducted follow-up research (between March and November 2001) to collect data on all pending cases up until 30 June 2001. This new data has been incorporated in this revised version of the Report.

William Duncan
Deputy Secretary General
March 2002

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Projet financé par la Fondation Nuffield
et co-dirigé par Professeur Nigel Lowe, Cardiff Law School et
Professeur William Duncan, Secrétaire général adjoint de la
Conférence de La Haye de droit international privé

* * *

A Project Sponsored by The Nuffield Foundation
and Co-Directed by Professor Nigel Lowe, Cardiff Law School and
Professor William Duncan, Deputy Secretary General of the
Hague Conference on Private International Law

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INTRODUCTION

Background and rationale to the project

In 1996 the Nuffield Foundation funded a project undertaken by Professor Nigel Lowe and Alison Perry to examine the operation in England and Wales of the Hague and European (or Luxembourg) Conventions dealing with international parental child abduction.[1] Following this work, Professor William Duncan, then the First Secretary to the Hague Conference, approached Professor Lowe, as Director of the Centre of International Family Law Studies at Cardiff Law School, to conduct a larger study into the workings of the *Hague Convention on the Civil Aspects of International Child Abduction 1980*.

Although there has been other research conducted into the general operation of the Convention, given that international child abduction has a high profile and is not infrequently the subject of debate in Parliaments around the world, it was considered important to conduct a study giving a global insight into the contemporaneous working of the Convention. At a meeting held in November 1999 it was agreed that the research should produce an accurate, objective and global template of the workings of the Convention in the year 1999, to be presented at the Fourth Review of the Convention in March 2001. Accuracy was sought by approaching each Contracting State for their own data, and objectivity was ensured as the study was jointly conducted with the Permanent Bureau. The Nuffield Foundation once again agreed to fund the project and we are grateful for their generous contribution.

Methodology

Pursuant to the initial meeting a questionnaire was piloted between February and May of the year 2000. The questionnaire was revised on the basis of comments received and was subsequently distributed in French and / or English in July 2000. The questionnaires asked for details of every application which was commenced in 1999 regardless of when, or even if, an outcome was reached. The year 1999 was chosen to give as contemporaneous a view as possible. While this gives us an accurate profile of the people involved and allows us accurately to calculate current figures for abduction applications, without having too many applications awaiting disposal, it does not allow us to include cases where appeals have taken a number of years, nor does it allow us to show trends.

In all, we have received, to date, some information from 39 Contracting States, comprising 70 different Central Authorities. We have experienced generous co-operation from many Central Authorities who have given their time to completing the questionnaires (which at times proved problematic) and dealing with subsequent queries, or have allowed us access to the requested information to retrieve the necessary data. In producing this report, we are indebted to the Central Authorities for their hard work and co-operation.

The report

This report, an updated version of the one presented at the Fourth Special Commission (Prel. Doc. No 3), is based on replies received by the end of November 2001. The first chapter contains an overall analysis of incoming return and incoming access applications. Subsequently, there is an individual report on each Contracting State from which we received completed questionnaires. To avoid being judgmental and to

[1] Lowe, N. & Perry, A. "International Child Abduction – The English Experience" (1999) 48 ICLQ 127.

remain objective, we have been careful in the terminology used. For example, rather than refer to 'abductor' which may in any event be inappropriate for access applications, we have referred to the person who takes the child in return applications as the 'taking person' and the person with care of the child in access applications as the 'respondent'.

The data contained in this report was submitted by Central Authorities from their own record keeping. We received the data between September 2000 and November 2001. Although we have information on incoming and outgoing applications, we have not cross-checked one Central Authority against another. Having initially received the data over a number of months there were inevitably problems in assessing pending applications, some of which had been resolved in the interim. Accordingly, in follow-up research conducted between March and November 2001 we have sought to collect data on all pending cases up until June 30 2001. This date was chosen as it is 18 months after the last possible application in 1999 could have been made, and having one single date by which to assess pending cases, makes the data comparable. Most countries contacted during this period have replied and consequently, most cases stated as pending were pending as at June 30 2001.

One disappointment was the relative lack of data that we were able to collect on the date of the child's actual return, since this was an important pointer on the issue of enforcement of orders. Nevertheless, we are satisfied that this report presents an accurate, objective, and global picture of international child abduction under the Hague Convention in the year 1999.

The findings

This report analyses replies received from 34[2] of the then 57 Contracting States (including those that either ratified or acceded at some point during 1999 viz. Belgium, China – Macau Special Administrative Region, Costa Rica, Fiji, United Kingdom - Bermuda, United Kingdom - Montserrat, and Uzbekistan).[3]

Overall we have analysed 954 incoming return applications received by the following 30 Contracting States namely, Australia, Austria, Belgium, Bosnia and Herzegovina, Canada, Chile, China (*i.e.* Hong Kong Special Administrative Region), Colombia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Israel, Italy, Mexico, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom (*i.e.* England and Wales, Northern Ireland, Scotland and the Cayman Islands), and the USA. The applications came from 47 different States. Belarus, China (*i.e.*– Macau Special Administrative Region), Luxembourg, Slovenia, the United Kingdom (*i.e.* Bermuda, the Falkland Islands, the Isle of Man and Montserrat), and Uzbekistan have returned the questionnaires and have indicated that they received no incoming return applications in 1999.

[2] The United Kingdom, Canada and China –Special Administrative Regions of Hong Kong and Macao only - being treated as single Contracting States, however, we have analysed the United Kingdom jurisdictions separately because of the vast amount of cases handled by England and Wales.

[3] Since 1999, (as of December 2001), Turkey and Slovakia have ratified the Convention and Brazil, El Salvador, Estonia, Latvia, Malta, Nicaragua, Peru, Sri Lanka, Trinidad and Tobago, and Uruguay have acceded to it.

Additionally we have analysed 197 incoming access applications received by 25 Contracting States namely, Australia, Austria, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Luxembourg, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom (*i.e*. England and Wales, Northern Ireland, Scotland and the Cayman Islands), and the USA. The applications came from 32 different States. Belarus, Belgium, Bosnia and Herzegovina, China (*i.e.* Hong Kong, and Macau), Colombia, Iceland, Mexico, Slovenia, The United Kingdom (*i.e.* Bermuda, the Falkland Islands, the Isle of Man and Montserrat), and Uzbekistan have returned the questionnaires and have indicated that they received no incoming access applications in 1999.

Combining return and access applications, we have analysed a total of 1151 incoming applications. We have also received overall numbers but not the detailed forms from four other Contracting States namely, Argentina, Croatia, Mauritius and South Africa.[4] Taking into account the number of incoming applications received by these four States, the figure rises to 1189 applications (comprising 984 return and 205 access applications). Using the data that we have collected on outgoing applications which were sent to Contracting States other than those mentioned above, for which we have incoming data, we have information on a total of 1268 applications comprising 1052 return and 216 access applications. There may be some cases between the Contracting States for whom we have no information, however, we expect that there were no more than 20 such cases and probably 10 or less. Therefore, we estimate that there was a maximum of 1280 Hague applications (comprising roughly 1060 return and 220 access applications) made in 1999. In other words, we have data on 99% of all applications made under the Hague Convention in 1999, our detailed data accounting for 90%.

There was a clear preponderance of return to access applications. Based on the figures we have received we have found an overall ratio of about 83% : 17% return to access applications.

When considering this global estimate of the number of applications under the Hague Convention, it is worth bearing in mind that:

1 Every application involved at least two Central Authorities.

2 There were more children involved than there were applications. Based on the information we have received, we have knowledge of 2015 children and given that the possible remaining cases may involve up to 15 children we estimate that Hague applications in 1999 involved no more that 2030 children.

3 The above figures only relate to applications under the Hague Convention routed through Central Authorities and not to child abductions overall. In particular they do not include abductions to non-Convention countries; they do not include abductions *within* State boundaries; and they do not include all abductions even as between Contracting States. For example, some applications are made under the *European Convention (Luxembourg) on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children*, or under various

[4] We have also received some information from Zimbabwe however, it is not possible to determine whether these cases were commenced in 1999 and they have therefore not been included.

bilateral arrangements, or are made under the Hague Convention but directly to the domestic courts concerned and not through Central Authorities.

4 No estimate is possible of the number of cases in which the Convention had a deterrent effect.

The workload varied between Central Authorities with the USA (NCMEC) handling the most incoming applications (254). England and Wales handled the second highest (174). Overall, however, the Central Authority for England and Wales handled the most applications at 329, the USA having split incoming and outgoing applications between two separate bodies, the National Center for Missing and Exploited Children (NCMEC) and the Office of Children's Issues in the State Department. In contrast some Central Authorities handled no applications, namely, Belarus, China (*i.e*. Macau Special Administrative Region), United Kingdom (*i.e.* Bermuda, Falkland Islands, Isle of Man and Montserrat), and Uzbekistan.

I. A GLOBAL VIEW OF INCOMING RETURN APPLICATIONS

The applications

1. The number of applications

In this section we analyse 954 incoming return applications received by 30 Contracting States in 1999. (Belarus, Luxembourg, Slovenia and Uzbekistan did not receive any incoming return applications in that year.) These applications were received from a total of 47 different States.

2. The Contracting States involved

Contracting State That Received the Applications

	Number of Applications	Percent
USA	210	22
UK - England and Wales	149	16
Germany	70	7
Australia	64	7
France	42	4
Italy	41	4
Mexico	41	4
New Zealand	39	4
Ireland	38	4
Canada	36	4
Spain	36	4
Netherlands	26	3
Israel	19	2
Sweden	14	1
Denmark	11	1
Norway	11	1
Portugal	11	1
Switzerland	11	1
UK - Scotland	10	1
Austria	9	1
Belgium	9	1
Romania	9	1
Hungary	8	1
Chile	7	1
UK - Northern Ireland	6	1
Czech Republic	5	1
China - Hong Kong	4	0
Colombia	4	0
Iceland	4	0
Panama	4	0
Bosnia and Herzegovina	3	0
Finland	2	0
UK - Cayman Islands	1	0
Total	**954**	**100**

By far the most applications were received by the USA at 22%.[5] England and Wales received the second highest proportion of applications at 16%.

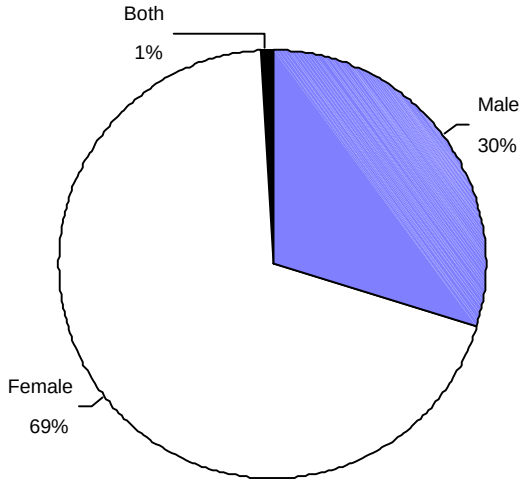
The taking person

The questionnaires asked about the gender of the taking person, but did not ask for the relationship between the taking person and the child. We have obtained this information from the USA, the Contracting State with the most applications, and as a general rule we conclude that in almost all applications females and males correspond to mothers and fathers.

3. The gender of the taking person[6]

Gender of the Taking Person

	Number	Percent
Male	280	30
Female	649	69
Both	8	1
Total	**937**	**100**



Globally, 69% of taking persons were female. While this conforms to the pattern found by Lowe and Perry[7] in their research on England and Wales in 1996,[8] it differs from the Girdner and Chiancone[9] research which suggests that both mothers and fathers are equally as likely to abduct children. The figure also masks regional differences. Closer

[5] In our original report (Prel. Doc. No 3), it was stated that the USA received 212 applications. We have since discovered that two of these applications were not instituted under the Hague Convention, and they have therefore been excluded from this report.

[6] In 17 of the applications, the gender of the taking person was not stated.

[7] Lowe, N. & Perry, A., *op cit.* at note 1.

[8] This research found that in 70% of cases the taking person was the child's mother.

[9] Unpublished but presented in summary at the 1st International Forum on International Child Abduction in Washington, September 1998.

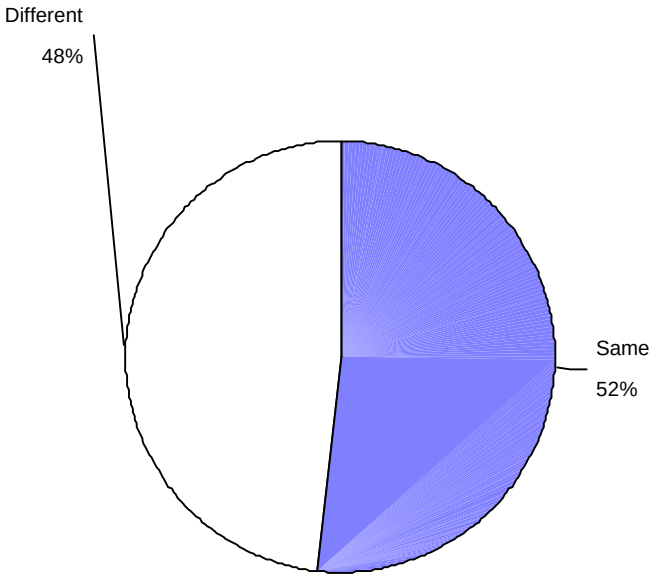
analysis has shown taking persons to be female in between 88% and 100% of applications received by Scandinavian countries. Additionally all 8 taking persons in applications to Hungary were female. Conversely, while the figures are small, all taking persons to Hong Kong and Bosnia and Herzegovina were male. There was also an interesting Anglo-American difference, which is worth noting. In incoming applications to England and Wales, 85% of taking persons from the USA were female. In contrast, in outgoing applications from England and Wales to the USA only 58% were female.

Detailed information was available on 6 of the 8 applications where more than one person took the child. These cases involved 2 sets of grandparents, a parent and older sibling, a parent and sister-in-law, a parent and a grandparent, and both parents taking a child from institutional care.

4. The nationality of the taking person[10]

Taking Person Same Nationality as Requested State

	Number	Percent
Same Nationality	462	52
Different Nationality	424	48
Total	**886**	**100**



Of the 886 applications for which we had information on the nationality of the taking person, 52% involved a taking person who was of the same nationality as the requested State. Greif and Hegar[11] and Lowe and Perry[12] identified a category of taking persons

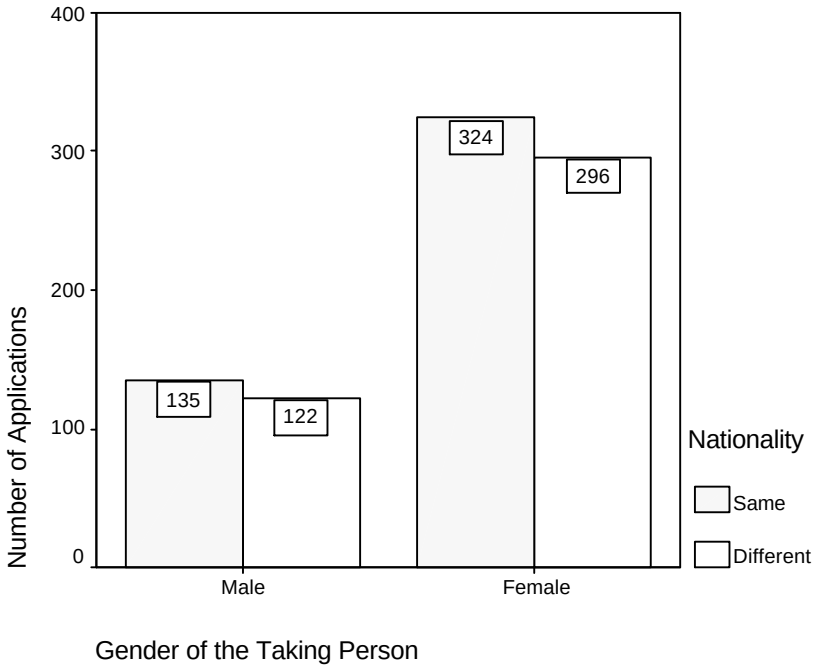
[10] In 68 of the applications, the nationality of the taking person was not stated.

[11] Greif, G. & Hegar, R., *When Parents Kidnap*, The Free Press, Macmillan, 1993.

[12] Lowe, N. & Perry, A., *op cit.* at note 1.

presumed to be 'going home' *i.e.* nationals of the State to which they took the child. Lowe and Perry found 61% of taking persons were what they would regard as 'going home'. This figure differs from the pattern of 52% shown above. It is also important to consider that many taking persons were dual nationals. As with gender, the overall picture does mask some interesting differences. For example, all 8 taking persons in applications to Hungary were Hungarian nationals. Conversely, in applications to Australia, only 22% of taking persons were Australian nationals.

5. The gender and nationality of the taking person combined[13]



The chart above shows the nationality of the taking person in relation to their gender. 53% of males and 52% of females were nationals of the requested State. In other words, it seems that males are marginally more likely than females to be 'going home'. Lowe and Perry[14] also found that males were marginally more likely to be nationals of the State to which they took the child. They also found that a higher proportion of taking persons were nationals of the requested State, 61% of females and 69% of males.

The children

6. The total number of children[15]

Altogether, there were at least 1394 children involved in the 954 applications.

[13] Additionally in 77 cases either the gender or the nationality of the taking person was not known.

[14] Lowe, N. & Perry, A., *op cit.* at note 1.

[15] In data available to us, the number of children was not stated in 4 applications. 2 of these applications involved sibling groups and the number of children involved in the remaining 2 applications is unclear. Consequently, this missing data involves at least 6 children and these have been added to produce the number quoted in the text.

7. Single children or sibling groups[16]

Single Child or Sibling Group

	Number	Percent
Single Child	598	63
Sibling Group	354	37
Total	**952**	**100**

Globally, 63%[17] of applications involved a single child.

Number of Children

	Number	Percent
1 Child	598	63
2 Children	286	30
3 Children	50	5
4 Children	13	1
5 Children	2	0
6 Children	1	0
Total	**950**	**100**

The table above shows that few applications involved more than 2 children.[18] Indeed, 93% of applications involved 1 or 2 children. There were only 3 cases involving sibling groups of 5 or 6 children.

8. The age of the children[19]

Age of the Children

	Number	Percent
0-4 years	512	38
5-9 years	568	42
10-16 years	282	21
16+	1	0
Total	**1363**	**100**

Of the 1363 children included, 42% were aged between 5 and 9 years old. 38% were aged between 0 and 4 years old, and 21% were aged between 10 and 16 years old.[20] Despite the fact that the Convention does not apply to children over the age of 16, there was one application involving a child over 16.

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[16] Additionally, in 2 applications it was not stated whether the application involved a single child or a sibling group.

[17] This proportion was slightly higher than the 59% found by Lowe and Perry.

[18] In 4 of the applications, the number of children involved was not stated, however, it is shown in the table above, that at least 2 of these applications involved sibling groups.

[19] Additionally, the ages of 31 children were not stated.

[20] Lowe and Perry found that half of the children in their research were aged 5 or under and that 19% were over 10.

9. The gender of the children[21]

Gender of the Children

	Number	Percent
Male	731	53
Female	645	47
Total	**1376**	**100**

Of the 1376 children whose gender was stated, 53% were males. While the proportion of male and female children was relatively equal in most Contracting States, there was a higher proportion of male children in applications to Portugal at 75%, Norway at 71% and France at 67%. Conversely, in Sweden and Romania there was a lower proportion of male children at just 38% and 27% respectively.

The outcomes

The outcomes of the applications represent a key part of this analysis. It is important to stress that the outcomes analysed in this report are for all applications received in 1999 regardless of whether an outcome was reached in that year, or later, or even if at all. We have attempted to analyse all cases until the end of June 2001 and cases still open on this date have been classed as pending.[22]

From our database of outgoing applications we know of 81 cases which were received by Contracting States other than those analysed in this report. When the outcomes of these cases are added to the cases highlighted below, the global norms of percentages barely change and therefore we can be reasonably confident that the figures stated below are fairly accurate as a basis for deducing global norms.[23]

10. Overall outcomes[24]

Outcome of Application

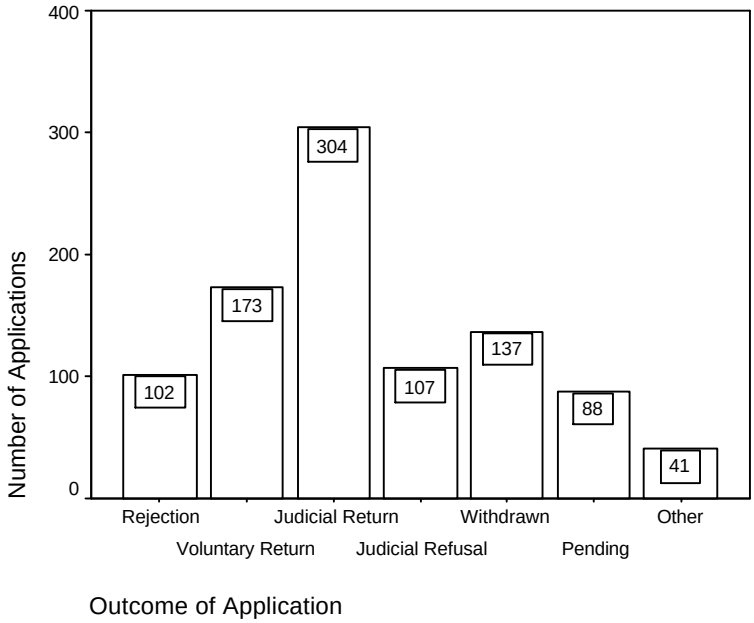
	Number	Percent
Rejection	102	11
Voluntary Return	173	18
Judicial Return	304	32
Judicial Refusal	107	11
Withdrawn	137	14
Pending	88	9
Other	41	4
Total	**952**	**100**

[21] Additionally, the gender of 18 children was not stated.

[22] The pending cases in Mexico were pending as of the end of May 2001. As and when the pending cases are resolved, the statistics cited below may well alter.

[23] When the extra 81 cases are added, the percentage of judicial returns falls by 2% to 30% and the percentage of judicial refusals increases by 1% to 12%. The percentage of pending cases also rises by 1% to 10%, and the percentage of withdrawn cases rises by 1% to 15%. There is no change in the other figures.

[24] Additionally, in 2 applications the outcome was not stated.



The table above shows that 32% of applications ended with a judicial return. The second highest category of outcome was voluntary returns at 18%. Therefore 50% of the applications, assuming the agreements or orders were actually enforced, ended in the return of the child. Of all applications that resulted in the return of the child, 64% were the result of judicial orders and the remaining 36% were the result of voluntary agreements. Altogether, 411 cases were concluded in court, 74% of which ended in a judicial return, and 26% in a refusal to return (judicial refusals amounted to 11% of all applications). 9% of applications are still pending, the vast majority of which were pending as at 30th June 2001, which is a minimum of 18 months and a maximum of 2½ years since the applications were made. A large proportion of these pending cases were in applications to Mexico. Indeed, if the Mexican statistics are removed from the analysis the proportion of pending cases is reduced to 6%. It is to be noted that rejections amounted to 11% of all applications, and withdrawn applications accounted for 14%. The outcomes categorised as 'other' included at least 20 applications where access was either ordered or agreed.

11. The outcomes by Contracting States which received the applications

Count

	Outcome of Application							
	Rejection	Voluntary Return	Judicial Return	Judicial Refusal	Withdrawn	Pending	Other	**Total**
Australia	8	7	26	8	12	3		**64**
Austria				7	2			**9**
Belgium	1	4	3					**8**
Bosnia and Herzegovina		1		2				**3**
Canada	2	13	8	4	3	2	3	**35**
China - Hong Kong			4					**4**
Czech Republic		3		1		1		**5**
Denmark	1	2	3	1	2	1	1	**11**
Finland		1			1			**2**
France	6	11	10	3	3	4	5	**42**
Germany	10	11	13	13	14	3	6	**70**
Ireland	1	7	16	4	9		1	**38**
Israel	2	2	6	5	3	1		**19**
Italy	4	6	18	7		1	5	**41**
Netherlands	8	5	10	2	1			**26**
Norway	2	3		3	2		1	**11**
Portugal	4	3	1	1	2			**11**
Spain	7	10	8	4	3	3	1	**36**
Sweden		2	6	4	2			**14**
Switzerland		1	4	1	2	1	2	**11**
UK - England and Wales	22	8	76	14	19	3	7	**149**
UK - Scotland		8	1		1			**10**
UK - Northern Ireland		1	2	2	1			**6**
UK - Cayman Islands			1					**1**
USA	13	59	50	10	44	25	9	**210**
Chile	1		2	3		1		**7**
Colombia	3					1		**4**
Hungary			4	3	1			**8**
Iceland	1		2		1			**4**
Mexico			6			35		**41**
New Zealand		4	22	4	9			**39**
Panama				1		3		**4**
Romania	6	1	2					**9**
Total	**102**	**173**	**304**	**107**	**137**	**88**	**41**	**952**

The table above shows the outcomes in relation to the Contracting States which received the applications. Having already considered the percentage of applications which globally end in each different outcome, we would suggest that where in relation to a particular Contracting State, an outcome appears to be outside of a 10% margin of this global norm, this should at least give pause for thought. Later in the report we discuss the figures in our analysis of the individual Contracting States. Nevertheless, it is worth pointing out some striking differences here.

All 4 applications to Hong Kong resulted in judicial return. 8 out of 10 applications to Scotland ended in a voluntary return. 3 out of 4 applications received by Colombia were rejected, and 7 out of 9 applications to Austria were judicially refused.[25] It is to be noted that 35 of the 41 applications received by Mexico, a proportion of 85%, were still pending

[25] As this report looks at applications in one particular year, it is only able to provide a snap shot of activity in any State. In relation to the States which have few cases, the outcomes may be dramatically different from one year to the next. In this regard it is to be noted that in 1998 Austria refused 3 of 8 applications, and in 2000 2 of 10 applications, although one case was refused at first instance and overruled on appeal and another case was refused at first instance and is currently pending an appeal.

as at the end of May 2001. All of the above represent much higher proportions than the global norms for these particular outcomes.

12. The reasons for rejection

Reason for Rejection by the Central Authority

	Number	Percent
Child over 16	2	2
Child Located in Another Country	33	32
Child Not Located	27	26
Applicant Had No Rights of Custody	8	8
Other	30	29
More than one reason	2	2
Total	**102**	**100**

The table above shows the reasons why applications were rejected by the Central Authorities. Rejected applications may sometimes be a result of inadequacies in the applications themselves. As this analysis deals with incoming applications, all the above applications were sent either by the Central Authority of the requesting State or by individuals, to the Central Authority of the requested State which then rejected them. Some Central Authorities, perhaps those with more Convention experience, may be more willing to reject an application before forwarding it. Other Central Authorities may be less willing to reject applications and may therefore forward an application even if they are unsure that the recipient Central Authority will accept it. Practice may also vary between Central Authorities once they have received an application, with again some being more willing than others to reject. Whatever the explanation rejection rates vary. Colombia rejected the highest proportion of applications (3 of the 4 received). Romania also rejected a high proportion (6 of the 9 received). At the other end of the spectrum, Mexico and New Zealand rejected no applications from the 41 and 39 applications they respectively received. Canada rejected only 1 of its 25 applications. In terms of numbers England and Wales rejected the most, 22 out of the 149 cases received, although this only amounted to 15%.

The fact that the child has not been located may show poor location facilities. On the other hand it may indicate a devious abductor. Similarly, applications made to the wrong Contracting States may be due to poor investigation or abductors making every effort not to be located. 59% of rejected applications were rejected because the child was not located or because the child was located in another Contracting State. Some of these latter cases will then result in further applications to the appropriate State.

In 30 applications which were rejected, the reason was stated to be in the 'other' category. The reasons covered by this category were diverse, the most common reason being that the Convention was not in force between the relevant Contracting States at the relevant time.

Two applications were rejected for more than one reason. In one application, the reasons were that the child was located in another country and the applicant had no rights of custody. In the other application, the applicant had no rights of custody and Article 35 was applicable.

13. The reasons for rejection by Contracting States which received the applications

Count

	Reason for Rejection by the Central Authority						
	Child over 16	Child Located in Another Country	Child Not Located	Applicant Had No Rights of Custody	Other	More than one reason	**Total**
Australia		2	2	2	2		**8**
Belgium		1					**1**
Canada			2				**2**
Denmark		1					**1**
France		2	3	1			**6**
Germany		3		1	6		**10**
Ireland		1					**1**
Israel		1			1		**2**
Italy		2	1	1			**4**
Netherlands	1	1	4		2		**8**
Norway		1	1				**2**
Portugal			2	1	1		**4**
Spain		1	4		2		**7**
UK - England and Wales		11	5	1	5		**22**
USA	1	5	2	1	4		**13**
Chile						1	**1**
Colombia		1	1			1	**3**
Iceland					1		**1**
Romania					6		**6**
Total	**2**	**33**	**27**	**8**	**30**	**2**	**102**

Half the rejections made by the Central Authority for England and Wales were because the child was located in another Contracting State. Strikingly, these rejections by England and Wales also amounted to a third of the global total of applications rejected on this ground.

14. The reasons for judicial refusal[26]

We have data on the reasons for refusal in 99 of the 107 applications which resulted in a judicial refusal. Of these, 83% of applications were refused on the basis that one ground for refusal had been met. The remaining 17% of applications were refused for more than one reason. The following tables show both single and multiple reasons for refusal.

[26] Additionally, there were 8 applications which were judicially refused but the reason for the refusal was not stated.

Reason for Judicial Refusal

	Number	Percent
Child Not Habitually Resident in Requesting State	12	12
Applicant had No Rights of Custody	8	8
Article 12	11	11
Article 13 a Not Exercising Rights of Custody	3	3
Article 13 a Consent	4	4
Article 13 a Aquiescence	4	4
Article 13 b	21	21
Child's Objections	13	13
Article 20	0	0
More Than One Reason	17	17
Other	6	6
Total	**99**	**100**

Bases of Multiple Reasons for Judicial Refusal

	Number	Percent
Child Not Habitually Resident in Requesting State	5	14
Applicant had No Rights of Custody	5	14
Article 12	2	6
Article 13 a Not Exercising Rights of Custody	1	3
Article 13 a Consent	8	22
Article 13 a Aquiescence	2	6
Article 13 b	5	14
Child's Objections	8	22
Article 20	0	0
Other	0	0
Total	**36**	**100**

The first table shows the reasons for judicial refusals. With the exception of Article 13 b, refusals appear to be well spread over a range of reasons. It is notable that the reason for refusal most frequently relied upon as a sole reason, was Article 13 b, as general jurisprudence requires extreme justification for the use of this defence.[27] The second most common reason for refusing return was the objections of the child, which was cited in 13 cases as the sole reason for refusal. There were 21 children whose objections were

[27] From our outgoing database, we know of 6 other cases refused on the basis of Article 13 b (although 2 of these cases are pending appeal).

cited as a reason for refusal in these 13 applications. One of the children was under 7 years old, 6 were aged between 8 and 10 years, 8 were aged between 10 and 11 years and 6 were over 13. It is also interesting that Article 20 was not relied upon in any case as a reason for refusing an application.[28] Overall, it may be observed that in the countries analysed the refusal rate was 11% of all outcomes and 26% of all applications that went to court.

The second table details the reasons for refusal in the cases where more than one reason was stated. There were 36 reasons in the 17 applications where more than one reason was given as a basis for refusing return. While Article 13 b was the sole reason most frequently relied upon, there were only 5 other cases where this reason was given when refusing return. Article 13 a consent and the objections of the child were cited as reasons for refusal in 8 cases each. Altogether, the objections of 30 children were considered. Interestingly, Article 20 was never used either as a sole reason for refusing a case or with another reason.

15. The gender of the taking person and the reasons for judicial refusal[29]

Count

	Gender of the Taking Person			
	Male	Female	Both	**Total**
Child Not Habitually Resident in Requesting State	5	7		**12**
Applicant had No Rights of Custody	1	7		**8**
Article 12	1	10		**11**
Article 13 a Not Exercising Rights of Custody		3		**3**
Article 13 a Consent	1	3		**4**
Article 13 a Aquiescence	1	3		**4**
Article 13 b	2	19		**21**
Child's Objections	5	6		**11**
More Than One Reason	3	12	1	**16**
Other	2	3		**5**
Total	**21**	**73**	**1**	**95**

There does not appear to be much difference regarding whether the taking person was male or female when considering the reasons for refusal. Overall, 7% of the applications where the taking person was male, and 11% where the taking person was female, ended in a judicial refusal. 90% of applications refused because of Article 13 b involved female taking persons, and 91% of Article 12 refusals involved female taking persons.

[28] Including our outgoing database, we know of no case which was refused on the basis of Article 20.

[29] In 4 applications the gender of the taking person was not stated.

16. The reasons for judicial refusal and the Contracting States which received the applications[30]

Count

	Reason for Judicial Refusal										
	Child Not Habitually Resident in Requesting State	Applicant had No Rights of Custody	Article 12	Art 13 a Not Exercising Rights of Custody	Article 13 a Consent	Article 13 a Aquiescence	Article 13 b	Child's Objections	More Than One Reason	Other	**Total**
Australia	1		2			2		1	2		**8**
Austria		2					3		2		**7**
Bosnia and Herzegovina									2		**2**
Canada	1		1					1		1	**4**
Czech Republic										1	**1**
Denmark			1								**1**
France		1					2				**3**
Germany			3	2	1	1	3	1	1		**12**
Ireland		1									**1**
Israel						1			3	1	**5**
Italy	1				2		2	2			**7**
Netherlands					1			1			**2**
Norway		1	1					1			**3**
Spain		1						2	1		**4**
Sweden							4				**4**
UK - England and Wales	2	1	2				4	3	1		**13**
UK - Northern Ireland	1								1		**2**
USA	2	1		1			1		1	3	**9**
Chile									3		**3**
Hungary	2		1								**3**
New Zealand	1						2	1			**4**
Panama	1										**1**
Total	**12**	**8**	**11**	**3**	**4**	**4**	**21**	**13**	**17**	**6**	**99**

It is important to note that a high refusal rate does not necessarily indicate a poor performance. Refusal to return is permitted under the Convention. However, where a particular Contracting State has a high proportion of refusals this may be a possible cause for concern. In this respect Austria refused 7 out of 9 applications.[31] Similarly, when looking at individual Contracting States, one would expect the reasons for refusal to be diverse as they are shown to be in the global table above. Where the reasons are particularly concentrated under one ground, this may legitimately give cause for concern. Generally reasons for refusal were diverse except for in Sweden where all refusals were based on Article 13 b.

17. Withdrawn applications

The number of withdrawals was relatively high at 14%. This proportion is 4% higher than that stated in Preliminary Document No 3 presented at the Special Commission in March 2001 which provides some evidence of withdrawals increasing over time. There are many reasons why an application may be withdrawn and it is not possible from the data that we have to analyse the particular reasons. Nevertheless, we undertook a small study of withdrawn applications to and from England and Wales[32] and found that the most common reason for an application being withdrawn was that the applicant stopped communicating with their lawyer or with the Central Authority. Problems with legal aid were another reason commonly cited for withdrawal. Many applications were withdrawn because of a private agreement reached between the parties, or because an application for return was withdrawn in favour of an application for access. In other words, some applications may be withdrawn because of positive reasons such as access being agreed, while other applications are withdrawn for more negative reasons, perhaps to do with the system itself.

[30] In 8 applications the reason for refusal was not stated. See table on page 15.

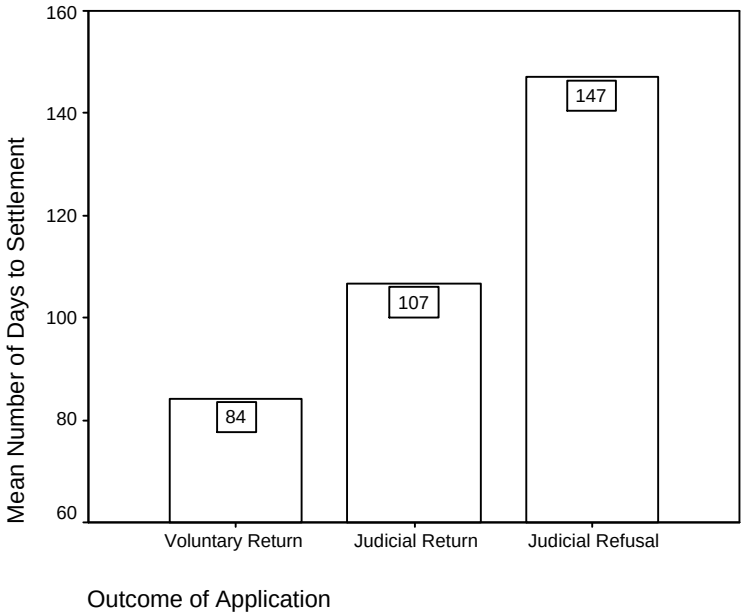
[31] But see note 25 above.

[32] Lowe and Perry in 1996 found an incoming withdrawal rate to England and Wales of 6% and an outgoing withdrawal rate of 12%.

Speed[33]

As with outcome, speed is a key issue when considering the successful working of the Convention. Indeed Article 11, paragraph 2, of the Convention implies a six-week period in which applications should be resolved. The following analysis considers speed in relation to 3 outcomes, namely, judicial returns, voluntary returns and judicial refusals. The other outcomes have been omitted for a variety of reasons. We have no information on timings in relation to rejected applications, our information regarding outcomes categorised as 'other' is imperfect, and withdrawn applications are omitted as they cover a wide variety of possible reasons for withdrawal, timing being only relevant in some cases. The pending cases are omitted, since timing cannot yet be quantified. However, if and when these cases do reach a conclusion, the timings indicated below as global norms will be increased. Indeed, it might be noted that the timings given below are slower than those presented in Preliminary Document Number 3 as they now include cases which were previously pending but which had reached a conclusion by 30th June 2001.[34]

18. The time between application and outcome



The chart above shows the mean number of days taken to reach settlement. We only have data on speed from 507 of the 584 applications which reached one of the above outcomes. The timings on the chart are for final resolutions and therefore include appealed applications if these were resolved by the time we received the data.

[33] In the following analysis on speed, the Canadian Province of British Columbia has been omitted as the Central Authority completed different forms on this issue. A detailed analysis of timings in these cases can be found in the report on Canada.

[34] The mean times cited below are 6 days slower for a voluntary return, 20 days slower for a judicial return and 14 days slower for a judicial refusal.

Considering the time taken purely in terms of the mean number of days, can be quite deceptive. Consequently, we have also considered the median average speed as well as the minimum and maximum number of days taken to reach each outcome.

Number of days taken to reach final outcome

	Outcome of Application		
	Voluntary Return	Judicial Return	Judicial Refusal
Mean	84	107	147
Median	44	73	135
Minimum	0	1	5
Maximum	431	718	606
Number of Cases	**139**	**280**	**88**

The chart above shows that cases can be resolved extremely quickly, with the fastest judicial return being reached within 1 day of application and the fastest judicial refusal taking just 5 days. There was a voluntary return which was decided on the same day that the application was filed. Conversely, other cases were resolved extremely slowly with the slowest judicial return taking 718 days, (just under 2 years), and the slowest judicial refusal taking 606 days, (just over 18 months). It should also be added that some cases were still pending at the end of June 2001. Cases taking this long to be resolved raise the question as to whether a return is indeed the best solution.

Timing is difficult to assess as there will always be cases which are resolved quickly, and there will always be slow, complex cases, principally those involving difficult points of law. Although generally, one might expect refusals to take longer, such cases are not necessarily complex, conversely those ending in a return may still involve resolving a hard point of law.

While the figures above are global averages, there was much diversity from State to State. The mean time for voluntary returns ranged from 10 days in applications to Belgium (2 cases) and Finland (1 case), to 215 days in applications to Norway (3 cases). The disposal rate in Scotland was noticeably fast with 5 cases taking a mean of 27 days to settle. Conversely, the rate was slow in Australia and the USA, with 4 cases taking 175 days, and 47 cases taking a mean of 122 days respectively.

Judicial returns from Hong Kong were notably quick, (4 cases taking a mean of 26 days), as were the 21 judicial returns from New Zealand which took a mean of 66 days to complete, and the 75 judicial returns from England and Wales, which took a mean of 71 days.[35] On the other hand, the slowest mean disposal rates were found in Switzerland, 4 judicial returns were completed in 300 days, Northern Ireland, 2 cases completed in 241 days, and the USA with 42 cases taking 185 days.

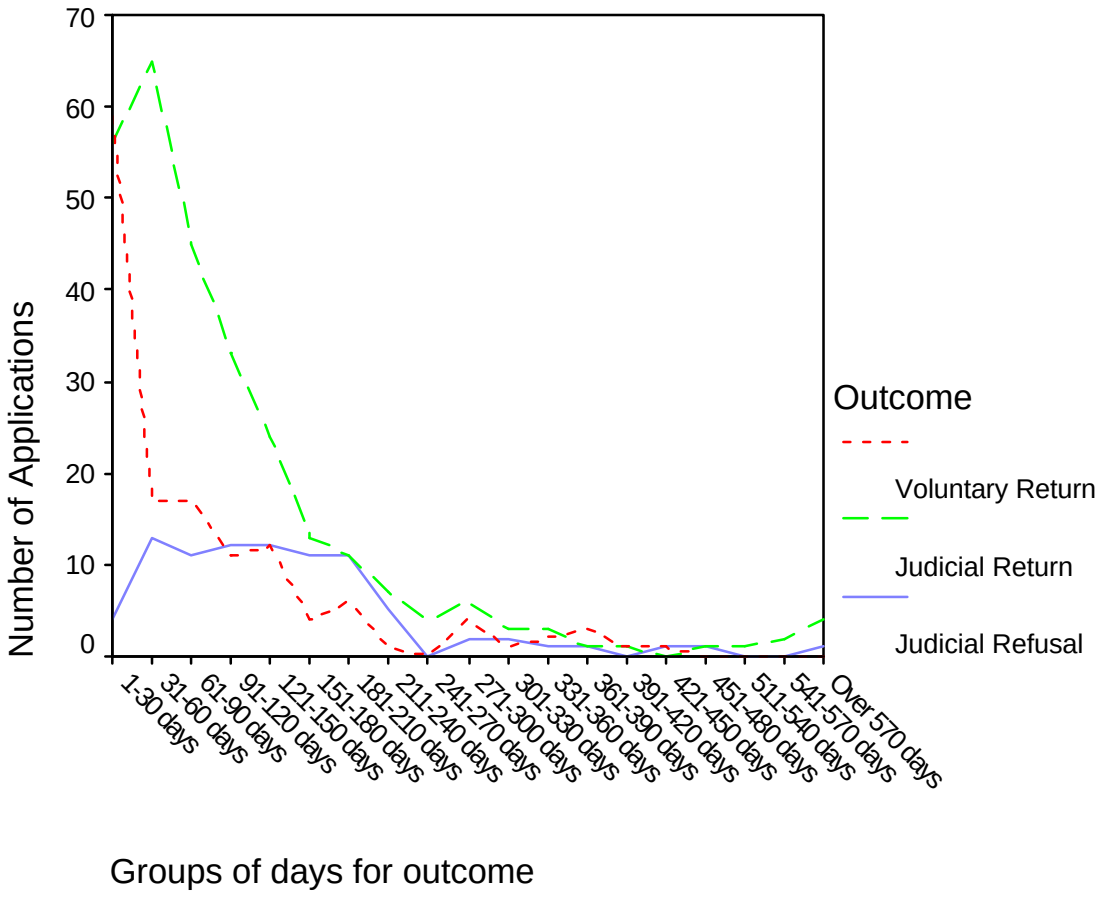
In relation to judicial refusals, 2 judicially refused cases from Bosnia were concluded in a mean of 23 days, while 14 cases from England and Wales and 3 from Norway took a

[35] The single judicial return from Scotland took 44 days to complete.

mean of 78 days. Conversely, the slowest mean disposal rates for judicial refusals were found in Canada, 1 case concluded in 309 days, Israel, 4 cases concluded in 299 days, Australia, 8 cases completed in 226 days, and France, 2 cases concluded in 219 days.

19. The effect of time on various outcomes in return applications

Interrogating our database further it is possible to analyse in more detail the impact of time on various outcomes (namely voluntary returns, judicial returns and judicial refusals) in return applications. It was not possible to do this with access applications, because our information on timing was less specific.



As the above chart shows, most voluntary returns are settled quickly. Indeed 67% of voluntary settlements were reached within 90 days, with most of these (42%) being resolved within 30 days. Judicial returns follow a broadly similar pattern with 59% of such orders being made within 90 days (though peaking between 31 and 60 days) and steadily declining after that. Predictably, few judicial refusals, in fact only 4, were made within 30 days but with a steady rate between 31 and 210 days (with 80% of all such refusals being made within this period). Interestingly, after 300 days, each of the outcomes flatten out. There were (surprisingly) 8 voluntary settlements (6%) as against 12 judicial returns (4%) and 6 judicial refusals (7%) arrived at in over 300 days. So far as court orders are concerned these findings support the view that while generally judicial refusals might take longer to resolve, there can equally be cases involving difficult issues of law that finally result in a return or a refusal to return. Indeed of the 5 cases which took over 570 days to reach a conclusion 4 resulted in a return order and 1 resulted in a refusal to return.

20. Appeals

Altogether, 59 applications were concluded after an appeal.[36] This amounts to 6% of all cases analysed and 14% of cases which went to court. Of these appeals 32 resulted in judicial return, and 27 resulted in judicial refusal. We have data on the time taken to reach the final settlement in 57 of the 59 cases which ended in appeal. Of the 32 cases which ended in a judicial return, we have information on timing for 31 cases and the mean number of days to reach a conclusion in these cases was 208 days. Of the 27 judicial refusals at appellate level, we have information on timing for 26 cases and the mean number of days taken to reach a conclusion in these cases was 176 days. Interestingly, judicial returns took longer than judicial refusals at appellate level. It should be emphasised that figures given here only relate to cases in which the appeal process was concluded at the date of writing. There are cases which are still pending an appeal.

With regard to whether decisions at an appellate level upheld, or overruled first instance decisions, we have information on 27 of the 32 cases which ended in a judicial return on appeal, and 23 of the 27 cases which ended in a judicial refusal on appeal. The judicial decisions both at first instance and on appeal are shown in the table below.

	Judicial Return on Appeal	Judicial Refusal on Appeal	**Total**
Judicial Return at First Instance	19	6	**25**
Judicial Refusal at First Instance	7	17	**24**
Other Judicial Decision at First Instance	1	0	**1**
Total	**27**	**23**	**50**

The table above shows that the majority of decisions on appeal upheld first instance decisions. In fact 36 of the 50 appeal decisions (72%), upheld first instance decisions. Of the remaining 14 decisions, 7 were judicially refused and 1 reached another decision at first instance, but all 8 resulted in return orders being made on appeal. In the remaining 6, return was ordered at first instance but on appeal the return order was overruled.

[36] There was also a Canadian case which was refused at first instance and then was in the process of appeal, but 422 days after the initial application to the Central Authority, the applicant withdrew the appeal.

II. A GLOBAL VIEW OF INCOMING ACCESS APPLICATIONS

The applications

1. The number of applications

In this section we analyse 197 incoming access applications received by 25 Contracting States in 1999. (Belarus, Belgium, Bosnia and Herzegovina, Colombia, China – Hong Kong and China – Macau, Iceland, Mexico, Slovenia and Uzbekistan, did not receive any incoming access applications in that year.) These applications were received from a total of 32 different States.

2. The Contracting States involved

Contracting State That Received the Applications

	Number of Applications	Percent
USA	44	22
UK- England and Wales	25	13
Germany	24	12
France	15	8
Australia	14	7
Austria	8	4
Canada	8	4
Netherlands	8	4
Spain	6	3
Switzerland	5	3
Italy	4	2
Portugal	4	2
Chile	4	2
New Zealand	4	2
Czech Republic	3	2
Norway	3	2
UK - Scotland	3	2
Denmark	2	1
Finland	2	1
Israel	2	1
Sweden	2	1
Ireland	1	1
Luxembourg	1	1
UK Northern Ireland	1	1
UK Cayman Islands	1	1
Hungary	1	1
Panama	1	1
Romania	1	1
Total	**197**	**100**

As with return applications the highest proportion of access applications were made to the USA (22%) and England and Wales (13%) respectively. While this is broadly similar

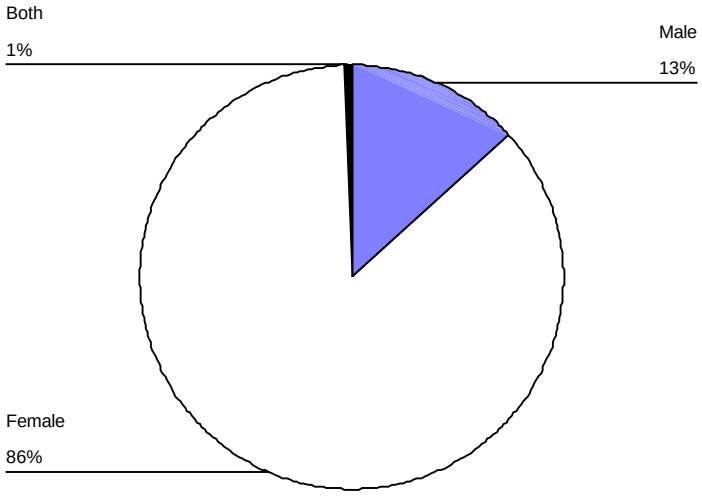
to the proportion in return applications it is notable that Germany received a greater proportion of access applications, 12%, than return applications, 7%.

The respondent

3. The gender of the respondent[37]

Gender of the Respondent

	Number	Percent
Male	25	13
Female	164	86
Both	1	1
Total	**190**	**100**



The vast preponderance of respondents were female, indeed this is more pronounced with access applications, 86% as against 69% in return applications. In 1 application there were 2 respondents, namely, the child's grandparents who had joint custody of the child.

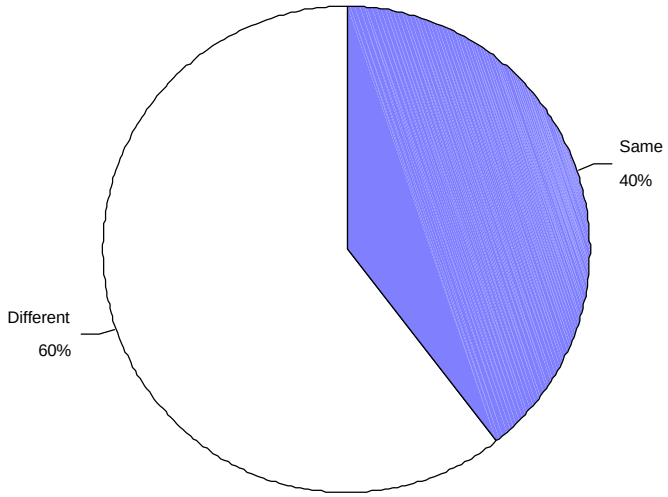
As with return applications, there is an interesting Anglo-American difference regarding gender, however, with regard to access applications the numbers and small and must consequently be considered with caution. All 3 respondents involved in applications from the USA to England and Wales were female, however, just 4 of the 7 (57%) respondents in applications from England and Wales to the USA were female. This is similar to the situation in return applications where 85% of taking persons from the USA to England and Wales were female and 58% of taking persons from England and Wales to the USA were female.

4. The nationality of the respondent[38]

[37] In 7 of the applications, the gender of the respondent was not stated.

Respondent Same Nationality as the Requested State

	Number	Percent
Same Nationality	71	40
Different Nationality	108	60
Total	**179**	**100**



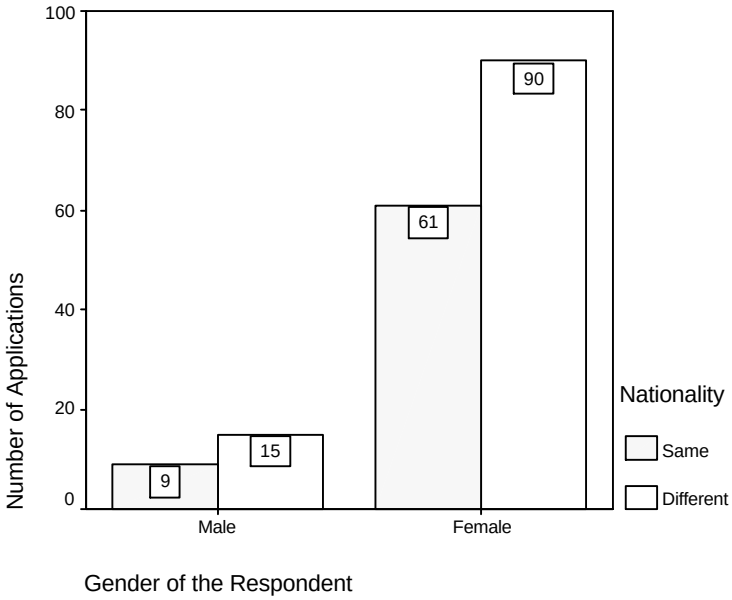
Unlike return applications, the majority of respondents were of a different nationality from the requested State. With access applications just 40% of respondents had the nationality of the requested State, as opposed to 52% in the case of applications for return.

There were some regional differences: at one end of the spectrum only 7% of respondents in applications received by Australia were of Australian nationality *i.e.* the same nationality as the requested State. At the other end, 67% of respondents in applications received by Austria and 59% of respondents in applications received by Germany had the nationality of the requested State.

These findings are a little puzzling but are suggestive that access applications are different in kind to return applications.

[38] In 18 of the applications, the nationality of the respondent was not stated.

5. The gender and nationality of the respondent combined[39]



The chart above shows the nationality of the respondent in relation to their gender. Unlike return applications, respondents were less likely to have the nationality of the requested State, 38% of males and 40% of females as against 53% and 52% in return applications. On the other hand, as with return applications, gender seems to make no difference upon the proportion of respondents with the nationality of the requested State.

The children

6. The total number of children[40]

Altogether, there were at least 271 children involved in the 197 applications.

7. Single children or sibling groups

Single Child or Sibling Group

	Number	Percent
Single Child	136	69
Sibling Group	61	31
Total	**197**	**100**

Globally, 69% of applications involved a single child. This is a greater proportion than in return applications where 63% involved single children.

[39] In 22 of the applications, either the gender or the nationality of the respondent was not stated.

[40] In data available to us, the number of children was not stated in 2 applications. Both of these applications involved sibling groups. Consequently, this missing data involves at least 4 children and these have been added to produce the number given in the text.

Number of Children

	Number	Percent
1 Child	136	69
2 Children	49	25
3 Children	7	4
4 Children	3	2
Total	**195**	**100**

As with return applications, a high proportion of access applications involved 1 or 2 children, (95%). In return applications the proportion was 93%. No applications for access involved more than 4 children while in return applications there were 3 sibling groups of more than 4 children.

8. The age of the children[41]

Age of the Children

	Number	Percent
0-4 years	56	21
5-9 years	133	50
10-16 years	78	29
Total	**267**	**100**

Of the 267 children included, 21% were aged between 0 and 4 years old, 50% were aged between 5 and 9 years old, and 29% were aged between 10 and 16 years old. As with return applications the greatest proportion of children were aged between 5 and 9 years old. However, unlike applications to return, there were less children in the 0-4 years age group, 21% as against 38%, and more in the 10-16 years age group, 29% as opposed to 21%.

9. The gender of the children[42]

Gender of the Children

	Number	Percent
Male	133	50
Female	134	50
Total	**267**	**100**

There was the same proportion of male and female children involved in access applications, while in return applications 53% of the children were male. There was a higher proportion of male children in some of the Contracting States especially in Spain (7 of the 8 children), Canada (5 of the 7 children), and Chile (4 of the 5 children). Conversely none of the children involved in applications to the Czech Republic, and only 1 of the 6 children involved in applications to Israel were male.

[41] Additionally, the ages of at least 4 children were not stated.

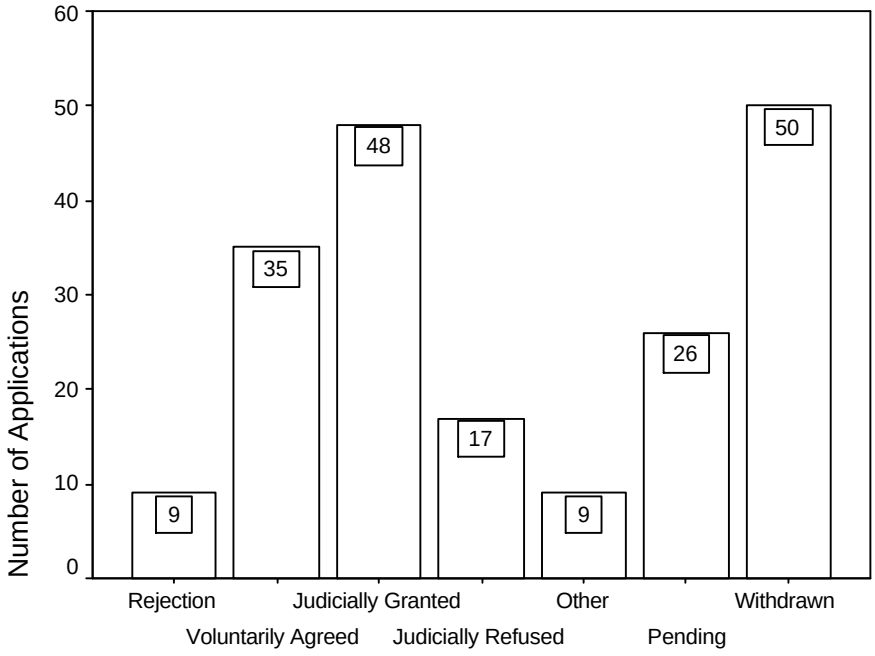
[42] Additionally, the gender of at least 4 children was not stated.

The outcomes

10. Overall outcomes[43]

Outcome of the Application[44]

	Number	Percent
Rejection by the Central Authority	9	5
Access Voluntarily Agreed	35	18
Access Judicially Granted	48	25
Access Judicially Refused	17	9
Other	9	5
Pending	26	13
Withdrawn	50	26
Total	**194**	**100**



Overall, 43% of applications concluded with the applicant gaining access to the child, either as a result of a voluntary agreement or a court order. This compares with 50% of return applications ending with the return of the child. The high proportion of applications (13%) that were still pending, as opposed to 9% of return applications, should be noted, though this was perhaps predictable as it generally takes longer to dispose of an access application than it does a return application.[45] It is also to be noted that in some cases where access was judicially granted or refused, the decision was made under the Hague

[43] Additionally, in 3 applications the outcome was not stated.

[44] In 2 of the applications which were pending, access was granted pending the court hearing.

[45] See further below under the section on speed.

Convention and in others the decision was made according to domestic law.[46] This bears testimony to the differences in interpretation of Article 21 of the Convention. Of the 65 applications that reached the court, 74% resulted in access being granted and 26% in a refusal to grant access. Surprisingly this proportion is the same as in return applications. In contrast, perhaps more predictably, given their generally more protracted nature, proportionately substantially more access applications were withdrawn than return applications (26% as opposed to 14%). Indeed withdrawn applications amounted to the single largest outcome.

11. The outcomes by Contracting States which received the applications

Count

	Outcome of the Application							
	Rejection by the Central Authority	Access Voluntarily Agreed	Access Judicially Granted	Access Judicially Refused	Other	Pending	Withdrawn	**Total**
Australia		4	3	4			3	**14**
Austria			3	2	2	1		**8**
Canada		2	2	1	1	1	1	**8**
Czech Republic			1			2		**3**
Denmark				2				**2**
Finland			1			1		**2**
France		3	1		3	3	5	**15**
Germany	2	2	5	2	1	1	11	**24**
Ireland					1			**1**
Israel							2	**2**
Italy			2	1		1		**4**
Luxembourg			1					**1**
Netherlands	1	1	3	2		1		**8**
Norway	1	1						**2**
Portugal			3	1				**4**
Spain		1	3			1	1	**6**
Sweden		1	1					**2**
Switzerland			3	1		1		**5**
UK- England and Wales		2	5		1	4	13	**25**
UK - Scotland		1	1				1	**3**
UK Northern Ireland	1							**1**
UK Cayman Islands						1		**1**
USA	4	16	4			6	12	**42**
Chile			2	1		1		**4**
Hungary			1					**1**
New Zealand		1	2				1	**4**
Panama						1		**1**
Romania			1					**1**
Total	**9**	**35**	**48**	**17**	**9**	**26**	**50**	**194**

There was variation between Contracting States as to the proportion of access applications being settled voluntarily and being obtained by a court order. Globally, where access was obtained, 42% was by voluntary arrangement, compared with 36% in return applications.

In the USA 48% of access applications resulted in the applicant having access to the child and of these 80% were through a voluntary agreement. In France there was only one

[46] Of the 48 applications judicially granted, 12 were known to be granted under the Convention and 25 under domestic law. Of 17 refusals, 5 were known to be refused under the Convention and 8 under domestic law. Our understanding is that all access applications considered by the courts in England and Wales, Germany and the USA are decided under domestic law.

court order granting access although in one of the cases categorised as "other" access was judicially granted with respect to one of two children, the parents having reached a voluntary agreement with regard to the other child. In England and Wales 52% of applications were withdrawn, which is double the global norm.

12. The reasons for rejection

Reason for Rejection by the Central Authority

	Number	Percent
Child Over 16	0	0
Child Located in another Country	3	33
Child Not Located	0	0
Other	6	67
Total	**9**	**100**

Access applications were not commonly rejected, there being only 9 such cases (amounting to 5% as opposed to 11% of return applications). There were various "other" reasons for rejection. In 2 cases, the applicant had no rights of custody and in another, a protection order had been made denying the mother access to the child. In the remaining 3 cases, domestic proceedings had been instituted which precluded the Convention application.

Speed

13. The time between application and outcome[47]

Timing to Voluntary Settlement

	Number	Percent
0-6 weeks	6	18
6-12 weeks	7	21
3-6 months	6	18
Over 6 months	14	42
Total	**33**	**100**

Timing to Judicial Decision

	Number	Percent
0-6 weeks	3	5
6-12 weeks	9	14
3-6 months	7	11
Over 6 months	46	71
Total	**65**	**100**

As the questionnaire was differently phrased on the issue of timing as against return it is only possible to indicate broad time bands as opposed to specific days. Previous research

[47] Additionally, in 2 applications the timing was not stated.

findings[48] found that access applications generally take considerably longer than return applications and this is generally confirmed by these findings with 71% of cases going to court taking over six months. Dispositions within six weeks were relatively infrequent. It is interesting to note that 42% of cases that reached a voluntary settlement took over 6 months and 18% of cases resulting in a voluntary settlement reached a conclusion in less than 6 weeks.

It is evident from these figures that access cases take considerably longer to resolve than return cases. For example, 26% of judicial decisions in return applications were decided within 6 weeks whereas in access applications the figure was just 5%. Considering applications which took over 6 months to reach a conclusion the difference is particularly noticeable, 19% of judicial decisions in return applications took over 6 months compared with 71% of decisions in access applications. Access applications also took longer to reach voluntary conclusions, with 18% being concluded within 6 weeks, compared with 50% of return applications. 42% of voluntary settlements in access applications took over 6 months compared with 14% of voluntary returns.

Timing of Outcome by Contracting States

Count

	Timing to Voluntary Settlement				
	0-6 weeks	6-12 weeks	3-6 months	Over 6 months	**Total**
Australia	2		1	1	**4**
Canada				1	**1**
France		1		2	**3**
Germany			1	1	**2**
Netherlands		1			**1**
Norway			1		**1**
Spain				1	**1**
Sweden				1	**1**
UK- England and Wales		1		1	**2**
UK - Scotland				1	**1**
USA	4	3	3	5	**15**
New Zealand		1			**1**
Total	**6**	**7**	**6**	**14**	**33**

[48] Lowe, N. & Perry, A., "The Operation of the Hague and European Conventions on International Child Abduction Between England and Germany, Part 1" [1998] IFL 8 at 11.

Count

	Timing to Judicial Decision				
	0-6 weeks	6-12 weeks	3-6 months	Over 6 months	**Total**
Australia		1	2	4	**7**
Austria			1	5	**6**
Canada	1	1		1	**3**
Czech Republic				1	**1**
Denmark		1		1	**2**
Finland				1	**1**
France				1	**1**
Germany	1			7	**8**
Italy		2	1	1	**4**
Luxembourg				1	**1**
Netherlands			1	4	**5**
Portugal	1	1		1	**3**
Spain			1	2	**3**
Sweden				1	**1**
Switzerland				4	**4**
UK- England and Wales		1		4	**5**
USA		1	1	1	**3**
Chile		1		2	**3**
Hungary				1	**1**
New Zealand				2	**2**
Romania				1	**1**
Total	**3**	**9**	**7**	**46**	**65**

As the above charts show, it is evident that most countries find it difficult to resolve access applications quickly. For England and Wales the mean period for a judicial return was 78 days, yet, 80% of judicial decisions in access applications took over six months. 88% of judicial decisions in applications received by Germany took over 6 months to be resolved and 83% of judicial decisions in applications to Austria took over 6 months to be resolved. All judicial decisions in Switzerland took over 6 months to reach a conclusion.

III. A COMPARISON BETWEEN APPLICATIONS FOR RETURN AND APPLICATIONS FOR ACCESS RECEIVED IN 1999

In 1999, 34 Contracting States received a total of 954 incoming applications requesting the return of children, and 197 incoming requests for access under the Hague Convention. 83% of applications received, requested the return of a child. The difference between the two reflects the perceived importance that the Hague Convention places on the prompt return of children, with specific guidelines laid out, as against securing access about which the Convention primarily seeks to secure co-operation among Central Authorities rather than to enforce through the courts.

Our statistics show that 30 of the Contracting States from whom we have data, received applications for return, yet only 25 received access applications. Notably, the Mexican Central Authority received 41 requests for the return of the child, yet received no access applications, Ireland received 38 applications for return but only one for access, although we understand that Ireland will only accept applications for access from England and Wales, under the European Convention.[49] On the other hand Austria received 9 applications for return and 8 for access.

Applications for return were received from 47 States, interestingly, these included 6 States which were not party to the Convention.[50] The access applications were received from 32 States, all of whom were parties to the Convention in 1999. There is an interesting geographic difference between return and access in terms of the Contracting States which made the applications. For example, analysing the five Contracting States which received the most applications in 1999, namely, the USA, the UK - England and Wales, Germany, France and Australia, we found that the Contracting States which made the most return applications to these States were not the same as those which made the most access applications.

There was a marked difference between the gender of the taking person in return applications and the gender of the respondent in access applications with 69% of the former being female as against 86% of the latter.

An interesting, and perhaps surprising, difference is that in 52% of return applications the taking person had the nationality of the requested State, yet in only 40% of access applications was this true of the respondent. The reason for this is not clear.

Corresponding to the difference in nationality, in the return applications 53% of males and 52% of females had the nationality of the requested State, whereas in access applications the proportions were 38% for males and 40% for females.

Access applications were slightly more likely to concern single children, 69% as against 63% for return applications. Combining return and access applications, 64% of applications received in 1999 involved a single child.

The age of the children in the return applications was generally lower than those in access applications. 38% of children in the return applications were aged between 0 and 4 years whereas only 21% of children in the access applications were this age. Conversely, 21% of children in return applications were aged between 10 and 16 years whereas 29% of children in the access applications were this age.

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[49] In addition to the 24 access applications that Germany received under the Hague Convention, 10 were received using the European Convention.

[50] Namely, Cuba, Iraq, Malta, Slovakia, Turkey and Uruguay.

There was no major overall differences between the gender of the children in access and return applications. 53% of the children in return applications and 50% of the children in access applications being male.

While the proportion of voluntary settlements was the same for both return and access applications (18%), the proportion of applications determined by the courts was different with 43% of return applications being so concluded as against 34% of access applications. Interestingly, the proportion of court orders, which resulted in the application being granted was identical at 74% for both return and access applications.

More access applications were still pending, 13% as opposed to 9% of return applications. Although the withdrawal rates were generally high, it was striking that at 26% the withdrawal rate for access applications was almost double the 14% for return applications. We have found evidence of withdrawals increasing over time[51] and as access applications generally take longer to resolve, it was consequently expected that more would be withdrawn. Furthermore, the practicalities of arranging cross-border access are more difficult than arranging the return of a child on a single occasion, which could also help to explain the higher withdrawal rate.

11% of return applications were rejected compared with 5% for access applications, this seems largely to be accounted by reason that there are less difficulties in locating the child. 60 of the 102 return applications which were rejected (59%) were either because the child was located in another country or not located. In contrast only 3 of the 9 rejected access applications were due to the child not being located.

There was a considerable difference with the timing of return and access applications, especially with regard to judicial decisions. 26% of return applications were judicially decided in less than 6 weeks whereas for access applications the figure was just 5%. 19% of return applications as against 71% of access applications took over 6 months to reach a judicial decision. 50% of voluntary returns were negotiated in less than 6 weeks compared with 18% of voluntary settlements in access applications. 14% of voluntary returns took over 6 months as against 42% of the voluntary settlements in the access applications.

This difference confirms Lowe and Perry's findings that access applications take longer to conclude than return applications.[52] In part this is explained because in many jurisdictions,[53] access is determined under domestic law, indeed of the 65 access applications which were judicially decided, at least 33 were known to be made under domestic law, and 17 under the Convention.

Although Article 2 of the Convention states that Contracting States shall use the most expeditious procedures available to secure the implementation of the objects of the Conventions, the objects of the Convention place different emphasis on speed. Article 1 states the objects of the Convention:

"a. to secure the prompt return of the children wrongfully removed to or retained in any Contracting State; and
b. to ensure that rights of custody and access under the law of one Contracting State are effectively respected in other Contracting States."

[51] See p. 30.

[52] Lowe and Perry found that the average disposal time for an incoming return application from Germany was just under 6 weeks, for access this was 35 weeks. Lowe, N. & Perry, A., *op cit.* at note 48.

[53] Our understanding is that access applications considered by the courts in England and Wales, Germany and the USA are under domestic law.

As can be seen, Article 1 places an obligation for the prompt return of the child, yet there is no mention of speed for access.

The need for the return of the child to be arranged expeditiously is obvious, the sooner the child returns to their State of habitual residence, the less the child will have settled in their new environment. The need for a fast track system for dealing with access applications under the Hague Convention, however, is not so obvious, for apart from the fact that the applicant is in a foreign jurisdiction, there is arguably no need to treat the application differently from any domestic application for access.