

**ANALYSE STATISTIQUE DES DEMANDES DÉPOSÉES EN 2008 EN APPLICATION DE
LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS
DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS**

PARTIE I – RAPPORT GLOBAL

établie par le Professeur Nigel Lowe, Faculté de droit de l'Université de Cardiff

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**A STATISTICAL ANALYSIS OF APPLICATIONS MADE IN 2008 UNDER THE
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS
OF INTERNATIONAL CHILD ABDUCTION**

PART I – GLOBAL REPORT

drawn up by Professor Nigel Lowe, Cardiff University Law School

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Commission spéciale de juin 2011 sur le fonctionnement pratique de la
Convention Enlèvement d'enfants de 1980 et de la
Convention Protection des enfants de 1996*

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Special Commission of June 2011 on the practical operation of the
1980 Hague Child Abduction Convention and the
1996 Hague Child Protection Convention*

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TABLE OF CONTENTS

INTRODUCTION	4
I. BACKGROUND AND RATIONALE OF PROJECT	4
II. METHODOLOGY	4
III. THE REPORT.....	5
IV. EXECUTIVE SUMMARY.....	5
V. THE OVERALL FINDINGS	8
VI. RETURN APPLICATIONS	9
1. THE NUMBER OF RETURN APPLICATIONS.....	9
2. THE TAKING PERSON.....	14
3. THE CHILDREN.....	17
4. THE OUTCOMES	19
5. APPEALS	39
6. TIMING.....	40
VII. ACCESS APPLICATIONS	50
1. THE NUMBER OF ACCESS APPLICATIONS.....	50
2. THE RESPONDENT	54
3. THE CHILDREN.....	56
4. THE OUTCOMES	58
5. APPEALS	64
6. TIMING.....	64
VIII. A COMPARISON BETWEEN APPLICATIONS FOR RETURN AND APPLICATIONS FOR ACCESS	70

PART I: GLOBAL REPORT

INTRODUCTION

I. BACKGROUND AND RATIONALE OF PROJECT

1. This is the third statistical survey into the operation of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter, "the Convention") conducted by the Centre of International Family Law Studies at Cardiff University Law School (under the Directorship of Professor Nigel Lowe) in collaboration with the Permanent Bureau of the Hague Conference on Private International Law. The majority of funding for this project was generously provided by the International Centre for Missing and Exploited Children (ICMEC) with contributions from the Permanent Bureau and Cardiff Law School.

2. This survey concerns applications made in 2008. Previous surveys concerned those made in 1999 and 2003.

II. METHODOLOGY

3. The survey is based upon responses to a detailed questionnaire which was sent to each Central Authority. The questionnaire was designed to collect information about: the number of incoming applications; those who allegedly abducted the children (in this report referred to as "taking persons" – see further below); the children involved; the outcome of the application; and on the length of time it took to reach the outcome. The questionnaire was modelled on those used previously but with some revisions. In particular, in relation to timing, the question of the date at which the child was actually returned was omitted from the 2008 survey because so few Central Authorities had records of this information and so little data had been generated in previous surveys. However, a new question was added asking for the date that the application was sent to court so as to give a better insight into the timing of each stage in the whole process. The questionnaire was originally distributed by the Permanent Bureau in English, French and Spanish in August 2010.

4. The questionnaires sought details of every incoming application made in 2008 regardless of when, or even if, an outcome was reached. The year of 2008 was chosen to give as contemporaneous a view as possible in relation to the holding of the Sixth Special Commission in June 2011. To be comparable with previous surveys the outcomes of applications were recorded up to 18 months after the last possible application could have been made, namely 30 June 2010. Applications unresolved after that date have simply been classified as "pending". While this methodology allows us to give a profile of the people involved and allows us accurately to calculate the current figures for abduction applications, without having too many applications awaiting disposal, it does not enable us to include a full analysis of applications which have taken a number of years. On the other hand, the fact that an application is pending for a minimum of 18 months after it is made is significant in itself.

5. In all we received responses from 60 Contracting States and estimate that this captures 94% of all applications. This can be compared with responses from 58 Contracting States in the 2003 survey and 39 Contracting States in the 1999 survey. We have experienced generous co-operation from Central Authorities who have given their time to completing the questionnaires 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.

III. THE REPORT

6. This report is based on the 60 responses to our questionnaire and contains an overall analysis of incoming return and access applications and compares the findings with those from the previous surveys. It also includes a separate analysis of regional trends and individual country reports. To avoid being judgmental and to remain objective we have been careful in the terminology used. For example, rather than refer to an alleged "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 against whom an access application has been brought as the "respondent". We have also generally avoided comment but rather let the figures speak for themselves.

7. The data contained in this report was submitted by Central Authorities from their own records. Although we have information on incoming and outgoing applications, we have not cross-checked one Central Authority against another. We have primarily relied upon the incoming data because that contained first hand information. We have, however, used the outgoing data to calculate overall numbers.

8. The report that follows begins with an overall summary of the findings, followed by an analysis of the applications made under Article 12 of the Hague Convention for the return of the child. The next section discusses access applications made under Article 21 and Part II of the report examines regional trends.

9. It was formally presented on the opening day of the Sixth Meeting of the Special Commission in The Hague in June 2011 and was subsequently revised over the summer and autumn 2011.

IV. EXECUTIVE SUMMARY

10. Replies have been received from 60¹ of the 81 States party to the Convention in 2008 (there are now 86 following the accession of Andorra, Morocco, Gabon, Singapore and the Russian Federation). Detailed information has been provided on a total of 2,321 incoming applications, comprising 1,961 return and 360 access applications.

11. Compared with the 2003 survey, there has been a 45% increase in return applications and a 40% increase in access applications.²

Return applications

12. 69% of taking persons were mothers, a figure that has stayed virtually constant throughout past surveys at 68% in 2003 and 69% in 1999. In 2008, 28% of the taking persons were fathers and the remaining 3% comprised grandparents, institutions or other relatives.

¹ Albania, Argentina, Armenia, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China - Hong Kong and Macau, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Honduras, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Romania, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, UK (England and Wales, Northern Ireland, Scotland, Isle of Man, Bermuda, Cayman Islands, Falkland Islands), Ukraine, Uruguay and USA.

² To gain a direct comparison the 2008 returns have been contrasted with those of 2003 for only the countries that responded to both surveys. The applications made and received by States that implemented the Convention after 2003 have also been excluded for these purposes.

13. Where the information was available (in 17% of the applications which constituted a sample size of 335 applications), the large majority (72%) of taking persons were the "primary carer" of the child.³ Where the taking person was the mother, this figure was 88% but only 36% where the taking person was the father. 60% of taking persons had the same nationality as the requested State.⁴ Proportionately more taking fathers (64%) had the same nationality as the requested State compared with 59% of mothers.

14. A total of 2,705 children were involved in the 1,961 return applications, making an average of 1.38 children per application. A large majority of applications (69%) involved a single child and there were close to equal numbers of boys and girls with 51% of children being male and 49% female. The average age of a child involved in a return application was 6.4 years, but 6.0 years if taken by a mother and 7.2 years if by a father.

15. The overall return rate was 46%,⁵ lower than the 51% recorded in 2003 and 50% in 1999, and comprised 19% voluntary returns and 27% judicial returns. A further 3% of applications concluded with access being agreed or ordered, the same proportion as in 2003. 15% of applications ended in a judicial refusal (higher than 13% in 2003 and 11% in 1999), 18% were withdrawn (15% in 2003 and 14% in 1999) and the number of applications still pending at the cut off date of 30th June 2010 was 8%, lower than the 9% in 2003 and 1999. There was a decrease in the rate of rejection by the Central Authorities under Article 27 with 5% of applications ending in this way in 2008 compared with 6% in 2003 and 11% in 1999.

16. In 2008, 44% of applications were decided in court (44% in 2003 and 43% in 1999). 61% of court decisions resulted in a judicial return order being made compared with 66% in 2003 and 74% in 1999.

17. In 2008, 286 judicial refusals were recorded with reasons available in 262 of these applications. A further 7 applications involved a judicial refusal (4 applications ending with different outcomes for different children and 3 in more than one outcome) giving a total of 269 applications with reasons for refusal. The figures are complicated because 18% were refused for more than one reason. If all the reasons relied upon are combined then, following the pattern in previous surveys, the most frequently cited reason for refusal was Article 13(1) *b*) (27%). 17% were refused following the child's objections, 15% because the child was not found to be habitually resident in the Requesting State and 13% citing Art 12.

18. In 2008, applications generally took longer to reach a conclusion. The average time taken to reach a decision of judicial return was 166 days (125 days in 2003 and 107 in 1999) and a judicial refusal took an average of 286 days to conclude (233 in 2003 and 147 in 1999). For applications resulting in a voluntary return the average time taken was 121 days (98 days in 2003 and 84 days in 1999).

19. 11% of all applications in 2008 involved an appeal (24% of all applications that went to court). Looking only at the applications that did not involve an appeal and the first instance decisions of those that did, the average time taken to reach a decision was 168 days. By contrast, applications that went on appeal took an average of 324 days to conclude.

³ 40% were the sole primary carer of the child and 33% were a joint primary carer. These figures have been rounded up.

⁴ Either their sole nationality was the same as the requested State or they held dual or triple citizenship, one of which was the nationality of the requested State.

⁵ Calculated excluding applications where the outcome was missing.

20. The 2008 survey also inquired for the first time into how the time taken to reach a decision was split between the Central Authorities and the courts. On average, a Central Authority held the case for 76 days before sending it to court and the court then took 153 days to dispose of it.

Access applications

21. In the 360 access applications made under Article 21 in 2008,⁶ 79% involved a mother as the respondent (79% in 2003 and 86% in 1999). 50% of respondents had the same nationality as the requested State as against 53% in 2003 and 40% in 1999. As in 2003, 72% of applications concerned a single child and a total of 477 children were involved making an average of 1.33 children per application. The overall average age of a child involved was 7.8 years (7.9 years in 2003), 7.5 years if the respondent was the mother and 9.1 years if it was the father of the child. As with previous studies there was an even distribution of boys and girls with 49% being female and 51% male.

22. The overall rate at which access was agreed or ordered fell to 21% from 33% in 2003 and 43% in 1999. 31% of applications were withdrawn (22% in 2003 and 26% in 1999), 17% pending and 14% ending in reasons described as 'other'. 13% were rejected and 3% refused.

23. Access applications took much longer to resolve than return applications and the average time taken to reach a final outcome was 309 days if there was a voluntary agreement for access, 357 days if access was judicially ordered and 276 days if access was refused. 73% of applications that were judicially determined and 74% of voluntary settlements took over 6 months to resolve.

⁶ Not including return applications where the outcome was that access was agreed or judicially granted.

V. THE OVERALL FINDINGS

24. Replies were received from 60 of the 81 Contracting States in 2008 (there are now 86 following the accession of Andorra, Gabon, Morocco, Singapore and the Russian Federation). Detailed information has been provided on a total of 2,321 incoming applications, comprising 1,961 return and 360 access applications. This can be compared with the responses from 58 States in 2003 recording 1,479 applications and the 39 States in 1999 recording 1,151 applications.

25. Comparing the data from the States which responded to both the 2003 and 2008 survey there has been a 44% increase in the total number of applications made under the Convention⁷ with a 45% increase in return applications and a 40% increase in access applications.

26. In 2008 the ratio of return applications to access applications was 84%:16%, respectively. This is exactly the same proportion as in 2003 and can be compared with 83%:17% in the 1999 survey.

27. As we did not receive responses from all the Contracting States in 2008 we have estimated the total number of applications actually made in this year. To do this we have used the data we have collected on outgoing applications which were sent to the Contracting States who did not respond in 2008 and added to this an estimate of the number of applications between Contracting States for whom we have no information. We estimate that there was a maximum of 2,460 applications in 2008 comprising 2,080 return and 380 access applications.

28. In 2003 there were an estimated 1,610 applications. Therefore, excluding the 8 States that have joined the Convention since 2003, there has been an estimated increase of 45% in applications.⁸ In 2003, it was estimated that there had been an increase of 14% in the total number of applications made under the Convention from that found in 1999.

29. 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 and so should not be looked upon as the workload of only one Central Authority. A single application may even involve more than two Central Authorities, for example, if the child is not located in the requested State and the application has to be forwarded to a third Central Authority.
2. There were more children involved than there were applications. Based on the information we have received we have knowledge of at least 3,182 children being involved in Hague applications (2,705 in return applications and 477 in access applications) and we estimate that Hague applications involved up to 3,377 children. This compares with a top estimate of 2,218 children being involved in Hague applications in 2003 and 2,030 children in 1999.
3. The above figures only relate to applications under the Hague Convention routed through Central Authorities and not to child abduction overall. In particular they do not include abductions *within* State boundaries; and they do not include all

⁷ To gain a direct comparison, only the data from States which responded to both the 2003 and 2008 survey have been used. The applications made and received by Albania, Armenia, Dominican Republic, Guatemala, Montenegro, San Marino, Seychelles and Ukraine have been excluded from the 2008 survey as these States became party to the Convention after 2003.

⁸ In 2008, excluding the States that have joined the Convention since 2003, we estimate there to be a total of 2,341 applications.

abductions even as between Contracting States to the Hague Convention. For example, some applications may have been made under the *European Convention (Luxembourg) on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children 1980*, or under various bilateral or multi-lateral agreements, such as the *Inter-American Convention on the International Return of Children*,⁹ or made under the Hague Convention but directly to the national courts concerned and not through the Central Authorities.¹⁰

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

30. The workload varied between Central Authorities. Combining both incoming and outgoing applications the United States of America (USA) handled the most with 598 applications, followed by England and Wales with 466 applications and then Germany with 383 applications. The fourth busiest Central Authority was Mexico which dealt with 272 applications in 2008 and then Italy with 238 applications. By contrast, some Central Authorities handled no applications at all in 2008, namely: Albania; Armenia; the Canadian provinces and territories of New Brunswick, Newfoundland and Labrador, North West Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon; the Chinese Central Authority in Macao; Nicaragua and the UK Central Authorities in the Isle of Man and Falkland Islands.

VI. RETURN APPLICATIONS

1. The number of return applications

31. We received detailed information on 1,961 return applications received by 54 States. This can be compared with the 1,259 return applications received by 45 States in 2003 and the 954 received by 30 States in 1999. This is a 56% increase in the total number of applications received in 2003 and a 106% increase from the number of applications in 1999. Comparing the data from the States which received return applications in 2008 to the same States responses in the 2003 survey there has been a 45% increase in return applications.¹¹

32. These applications were made by 68 States.¹² In comparison, the 1,259 incoming return applications received in 2003 came from 53 different Contracting States and in the 1999 survey the 954 return applications were made by 47 Contracting States.

33. The USA received the most incoming return applications (283) whilst England and Wales received 200, Mexico 168 and Germany 115. By contrast, no incoming return applications were received by Albania; Armenia; the Canadian provinces and territories of New Brunswick, Newfoundland and Labrador, North West Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon; the Chinese Central Authority in Macao; El Salvador; Malta; Monaco; Nicaragua and the UK Central Authorities in the Isle of Man, Falkland Islands and Cayman Islands.

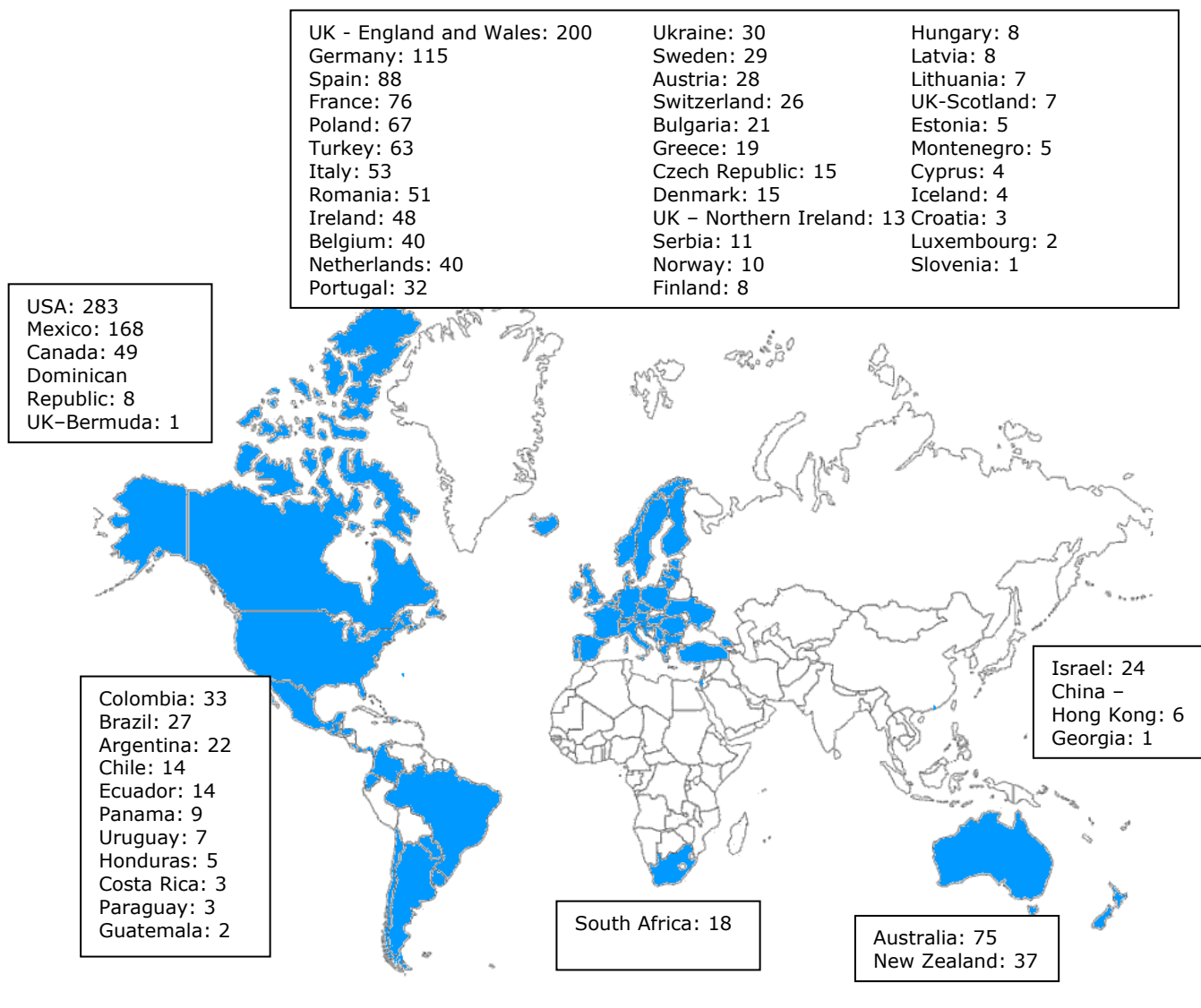
⁹ Signed in Montevideo, Uruguay, in 1989. The Convention has been in force since 1994.

¹⁰ As is permitted by Article 29 of the Hague Convention.

¹¹ To gain a direct comparison, only the data from States which responded to both the 2003 and 2008 survey have been used. The applications made and received by Albania, Armenia, Dominican Republic, Guatemala, Montenegro, San Marino, Seychelles and Ukraine have been excluded from the 2008 survey as these States became party to the Convention after 2003.

¹² In 2 applications the requesting State was not known.

The number of applications received by each state



34. As found in previous surveys, more applications were received by the USA than by any other Contracting State (283 applications). This amounts to 14% of the total number of applications received in 2008 and, although still high, is a lower proportion than the 23% and 22% recorded in 2003 and 1999, respectively. Similarly reflecting previous surveys, England and Wales received the second highest number with 200 applications amounting to 10% of all applications received compared with 11% in 2003 and 16% in 1999. The applications to England and Wales have been considered separately as it received such a higher number of applications compared with Scotland (7 applications) and Northern Ireland (13 applications). In 2008, Mexico overtook Spain in receiving the third highest number of applications with 168 applications (9%), followed by Germany with 115 applications (6%) and Spain with 88 (5%).

35. In 2003 only 5 States received more than 50 return applications.¹³ In 2008 this rose to 11 States receiving over 50.¹⁴

¹³ USA (286 applications), England and Wales (142), Spain (87), Germany (80) and Canada (56).

Requested States compared with the figures from 2003 and 1999

	2008	+/- count	% increase /decrease	2003	+/- count	% increase /decrease	1999
USA	283	-3	-1%	286	76	36%	210
UK - England and Wales	200	58	41%	142	-7	-5%	149
Mexico	168	141	522%	27	-14	-34%	41
Germany	115	35	44%	80	10	14%	70
Spain	88	1	1%	87	51	142%	36
France	76	34	81%	42	0	0%	42
Australia	75	32	74%	43	-21	-33%	64
Poland	67	49	272%	18			NR
Turkey	63	28	80%	35			N/A
Italy	53	7	15%	46	5	12%	41
Romania	51	44	629%	7	-2	-22%	9
Canada	49	-7	-13%	56	20	56%	36
Ireland	48	15	45%	33	-5	-13%	38
Belgium	40	15	60%	25	16	178%	9
Netherlands	40	14	54%	26	0	0%	26
New Zealand	37	10	37%	27	-12	-31%	39
Colombia	33			NR			4
Portugal	32	13	68%	19	8	73%	11
Ukraine	30			N/A			N/A
Sweden	29	7	32%	22	8	57%	14
Austria	28	16	133%	12	3	33%	9
Brazil	27			NR			NR
Switzerland	26	-13	-33%	39	28	255%	11
Israel	24	11	85%	13	-6	-32%	19
Argentina	22	9	69%	13	1	8%	12
Bulgaria	21	21		0			N/A
Greece	19	0	0%	19			NR
South Africa	18	7	64%	11	3	38%	8
Czech Republic	15	4	36%	11	6	120%	5
Denmark	15	3	25%	12	1	9%	11
Chile	14	-3	-18%	17	10	143%	7
Ecuador	14			NR			NR
UK - Northern Ireland	13	11	550%	2	-4	-67%	6
Serbia	11			N/A			N/A
Norway	10	6	150%	4	-7	-64%	11
Panama	9	6	200%	3	-1	-25%	4
Dominican Republic	8			N/A			N/A
Finland	8	2	33%	6	4	200%	2
Hungary	8	-5	-38%	13	5	63%	8
Latvia	8	8		0			N/A
Lithuania	7	7		0			N/A
UK - Scotland	7	-5	-42%	12	2	20%	10
Uruguay	7			NR			NR
China - HK	6	1	20%	5	1	25%	4
Estonia	5	4	400%	1			N/A
Honduras	5	2	67%	3			NR
Montenegro	5			N/A			N/A
Cyprus	4	-4	-50%	8			NR
Iceland	4	-2	-33%	6	2	50%	4
Costa Rica	3			NR			NR
Croatia	3	0	0%	3	-4	-57%	7

¹⁴ USA (283 applications), England and Wales (200), Mexico (168), Germany (115), Spain (88), France (76), Australia (75), Poland (67), Turkey (63), Italy (53), Romania (51).

Paraguay	3			NR			NR
Guatemala	2	2		0			N/A
Luxembourg	2	2		0	0		0
Georgia	1	1		0			NR
Slovenia	1	1		0			0
UK - Bermuda	1			0			NR
Albania	0			N/A			N/A
Armenia	0			N/A			N/A
El Salvador	0			0			N/A
Malta	0	-4	-100%	4			NR
Monaco	0			0			NR
Nicaragua	0			0			N/A
UK - Cayman Islands	0			NR			1
UK - Falkland Islands	0			0			NR
UK - Isle of Man	0			1			NR
States that did not respond in 2008*	0			20			6
Total	1961	703	56%	1259	275	28%	984

N/A = not applicable because not a Contracting State at the time

NR = no response received in that year

*The States that did not respond in 2008 received 20 applications in 2003 (Slovakia received 8; Bosnia and Herzegovina, 5; Belarus, 2; Belize, 2; Burkina Faso, 1; Sri Lanka, 1; and Thailand, 1) and 6 applications in 1999 (Bosnia and Herzegovina and Mauritius both received 3 applications)

36. As mentioned previously, there was a 56% increase in the total number of return applications received in 2008 compared with 2003. The table above compares the increase and decrease in applications received by each State that responded in 2008 with the figures recorded 2003 and 1999 and, in doing so, highlights the divergent changes in the number of applications received.

37. The greatest increase in the number of applications received by a single State was in Mexico where the Central Authority received an extra 141 return applications compared with the 27 recorded in the last survey (a 522% increase). The UK Central Authority of England and Wales received an extra 58 return applications, amounting to a 41% increase on 2003.

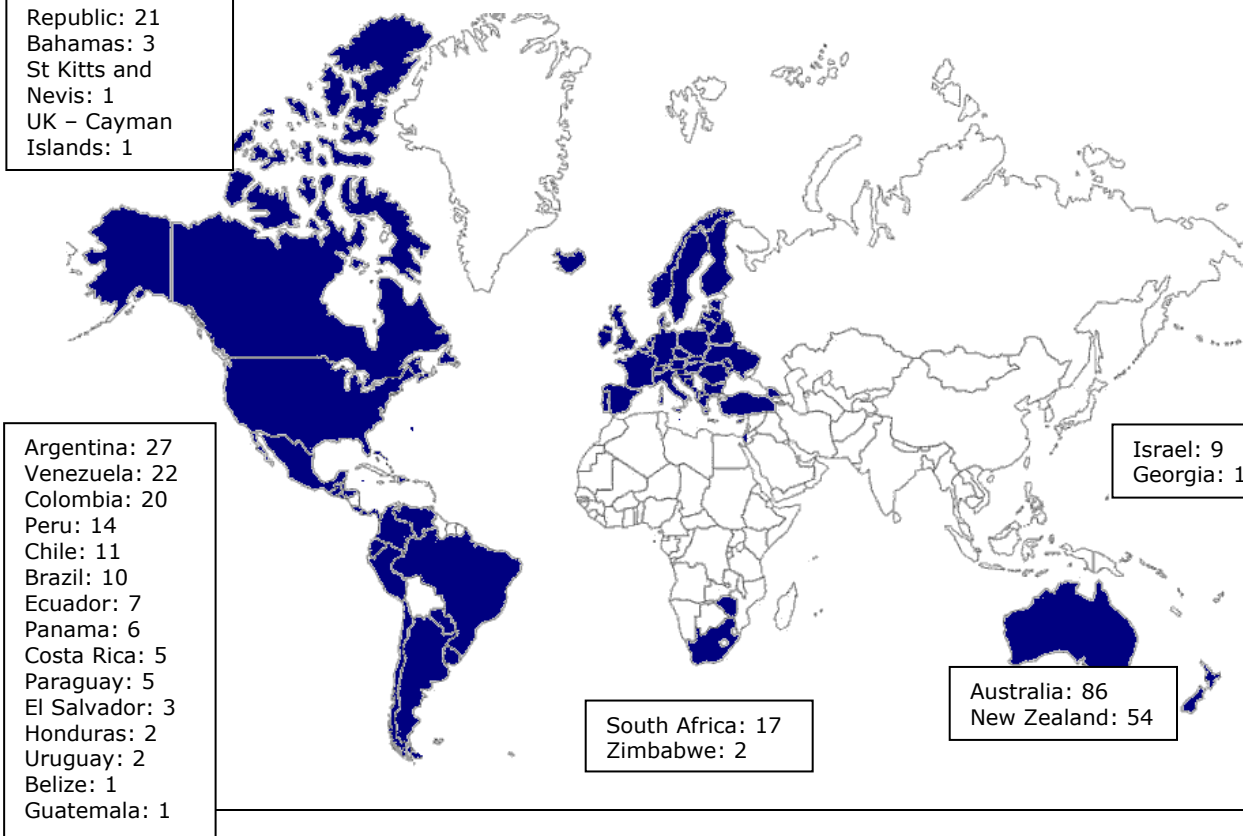
38. Relatively large increases in applications were also received by Poland (49 additional applications – a 272% increase) and Romania (44 additional applications – a 629% increase). Conversely, the number of applications received by Canada and the USA decreased by 7 applications and 3 applications, 13% and 1%, respectively.

39. It should be noted that the figures above include applications made by States in which the Convention came into force after 2003 and so would not have made any applications in the last survey. In 2008 the Dominican Republic made 11 applications to the USA, 4 to Spain, 2 to Mexico and 1 to Austria, Germany, Israel and Italy; Ukraine made 2 applications to both Israel and Italy and 1 to Germany; and Albania made 1 application to Switzerland.

The States that made the applications¹⁵

UK - England and Wales: 158	Hungary: 16	Ukraine: 5
Germany: 146	Romania: 16	Finland: 3
Italy: 127	Austria: 15	Malta: 3
Spain: 92	Czech Republic: 15	Belarus: 2
Poland: 74	Latvia: 13	Bosnia and Herzegovina: 2
France: 68	Bulgaria: 12	FYR Macedonia: 2
Belgium: 50	Lithuania: 12	Monaco: 2
Ireland: 50	UK-Northern Ireland: 10	Albania: 1
Netherlands: 50	Croatia: 9	Luxembourg: 1
Switzerland: 36	Turkey: 9	Republic of Moldova: 1
Slovakia: 35	UK - Scotland: 9	Montenegro: 1
Portugal: 27	Estonia: 8	Serbia: 1
Sweden: 24	Cyprus: 7	Slovenia: 1
Denmark: 19	Norway: 7	
Greece: 16	Iceland: 6	

USA: 309
Mexico: 111
Canada: 46
Dominican Republic: 21
Bahamas: 3
St Kitts and Nevis: 1
UK - Cayman Islands: 1



40. The pattern of Contracting States making the return applications is not quite the same as those receiving them and for some States there was quite a difference between the number of applications they sent and the number they received. For example, Italy received 53 applications in 2008 but in the same year made 127.

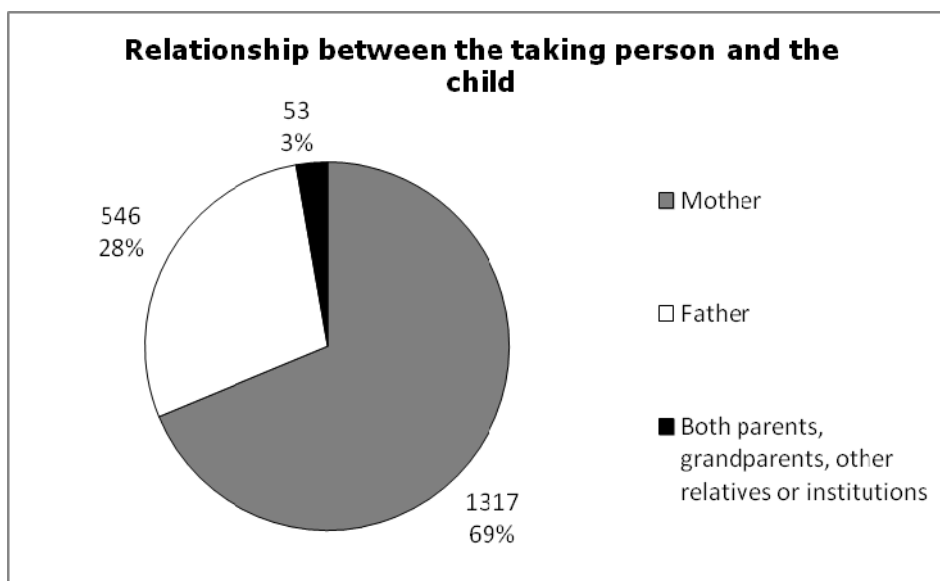
¹⁵ Information on the requesting State was not known for 2 applications.

41. By contrast, some States received far more applications than they made. Mexico received 168 but sent only 111, Turkey received 63 and sent only 9 and England and Wales received 200 and sent 158.

2. THE TAKING PERSON

2.1 The relationship between the taking person and the child¹⁶

42. In 2008, 69% of the taking persons were the mothers of the children involved, compared with 68% in 2003. 28% were fathers, compared with 29% in 2003. The remaining 3% of applications involved both parents, grandparents, institutions or other relatives, such as step parents or siblings, as the taking party.



43. In 1999, data was not collected as to the relationship between the taking person and the child and only the gender of the taking person was recorded. Looking at the gender of the taking person a similar pattern emerges with 69% being female, and so likely to be mothers, and 30% male and so probably fathers.

44. In some States all of the applications received, involved taking mothers¹⁷ (China – Hong Kong, 6 applications; Cyprus, 4 applications; Estonia, 5 applications; Lithuania, 6 applications; Luxembourg, 2 applications; Paraguay, 3 applications; UK – Scotland, 5 applications). In 2 further States, 90% or more of the applications received involved a taking mother: 97% of persons taking children to Ukraine were mothers (29 out of 30 applications) and 90% of taking persons to Norway (9 out of 10).¹⁸

45. Conversely, in some States relatively low proportions of taking persons were mothers. Only 20% of applications to Montenegro involved a mother as the taking person (1 out of 5 applications), 29% in Uruguay (2 out of 7), 38% in Latvia (3 out of 8), 42% in Northern Ireland (5 out of 12) and 47% in Mexico (79 out of 167).

¹⁶ The relationship between the taking person and the child was not known in 45 applications.

¹⁷ Not including Slovenia and UK – Bermuda where only one application was received or Guatemala where 2 applications were received but the relationship between the taking person and the child was only known in one.

¹⁸ Information on the relationship between the taking person and the child was missing for 1 application received by Lithuania and 2 received by UK – Scotland. The remaining applications received by those States (6 applications and 5 applications, respectively) involved taking mothers.

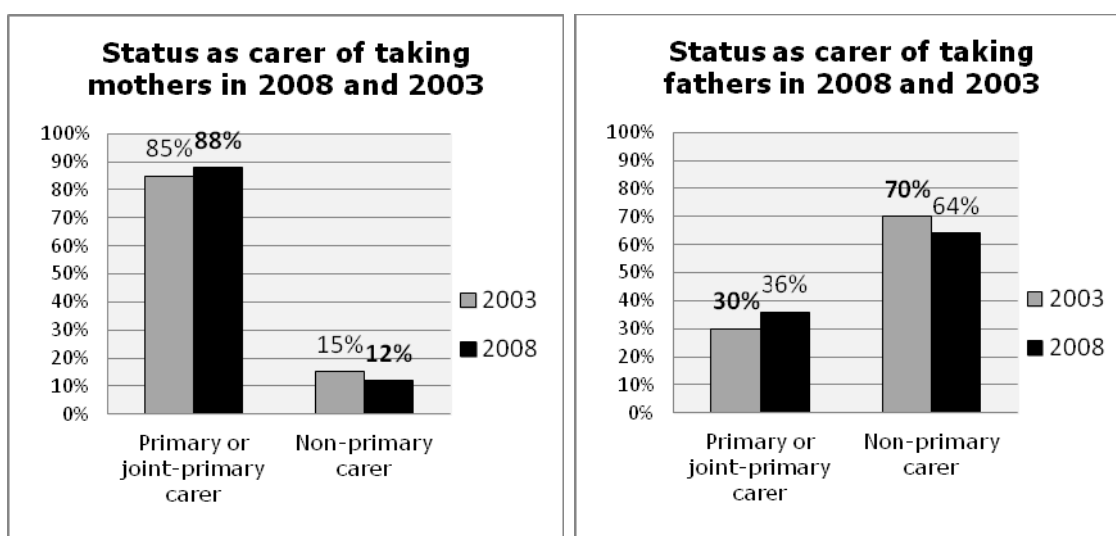
2.2 The status of the taking person as carer to the child

46. In 2008 and 2003 the survey included a specific question of whether the taking person was the "primary carer" of the child.¹⁹ This question was not included in the 1999 survey and in both 2008 and 2003 it proved a difficult question for many Central Authorities which did not include information on the status as carer of the parties involved in their records. There has accordingly been a relatively low response rate to this question, with information only available in 17% of applications in 2008 (a sample size of 335 applications) and 24% in 2003.²⁰

47. In relation to the States that were able to respond to this question, the findings are similar to those in 2003. 40% were said to be the child's primary carer, 33% their joint-primary carer²¹ and 28% a non-primary carer. Overall therefore, 72% of taking persons were the child's primary or joint primary carer²² compared with 68% in 2003.

2.3 The status as carer and relationship combined

48. Of the 17% (335 applications) where the information was reported, as in 2003, a clear picture has emerged showing that a large majority of taking mothers were a primary (whether the sole or joint-primary carer) of the child, whereas most of the taking fathers were not the primary carer. In 2008, 88% (207 applications) of taking mothers were the primary or joint primary carer of the child compared with only 36% (32 applications) of taking fathers.²³



¹⁹ The term "primary carer" was not defined in the questionnaire and so there is uncertainty in the terminology. The authors take the view that the "primary carer" refers to the parent with whom the child usually lived at the time of removal and the "joint-primary carer" where the child either lived with both parents at the time of removal or, if the parents were separated, spent a substantial amount of time with each parent.

²⁰ The States which had complete or partial records for the status as carer of the taking person were: Argentina, Australia, Belgium, Canada, China (Hong Kong), Czech Republic, Dominican Republic, Estonia, Finland, France, Iceland, Israel, Italy, New Zealand, Portugal, Switzerland.

²¹ Taking persons were recorded as "joint-primary carers" if the Central Authorities specifically stated that this was the case or if they labelled both the applicant and taking person as "primary carers".

²² This 2008 figure comprised 133 taking persons who were primary carers (40%) and 109 who were joint primary carers (33%).

²³ This comprised 51% of taking mothers being the sole primary carer (120 applications) and 37% a joint primary carer (87 applications). 13% of taking fathers were the sole primary carer (12 applications) and 22% were a joint primary carer (20 applications).

2.4 The nationality of the taking person²⁴

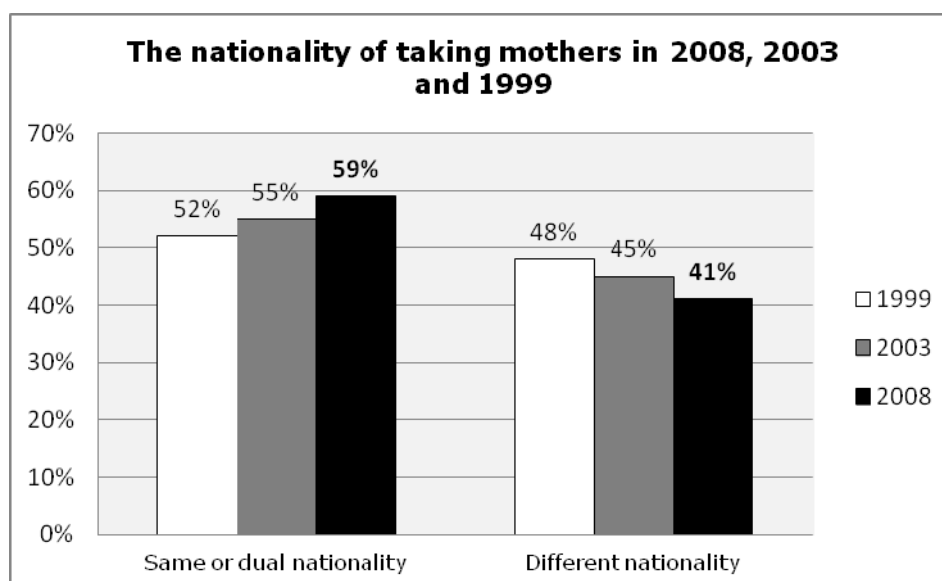
49. Previous research identified a category of taking persons having the same nationality as the requested State where it is likely, although not necessarily the case, that they are “going home”, that is, to the jurisdiction in which they were brought up. On this assumption, no changing trend can be seen in the three surveys – around half of all taking persons were a national of the requested State and so may be presumed to have been “going home”.

50. In 2008, 60% of taking persons took the child to a State of which they were a national.²⁵ This can be compared with the 2003 findings where 55% of taking persons went with the child to a State of which they were a national and 52% in 1999.

51. The 2008 figures can be broken down into 806 applications (54%) where the taking person’s sole nationality was that of the requested State, 90 applications (6%) where the taking person had dual nationality, one of which was that of the requested State, and one case where the taking person had triple nationality.

2.5 The relationship and nationality of the taking person combined

52. In 2008, a higher proportion of fathers went to a State of which they were a national but this was not the case in previous surveys where the proportions of both mothers and fathers who may be presumed to be “going home” have been virtually the same.

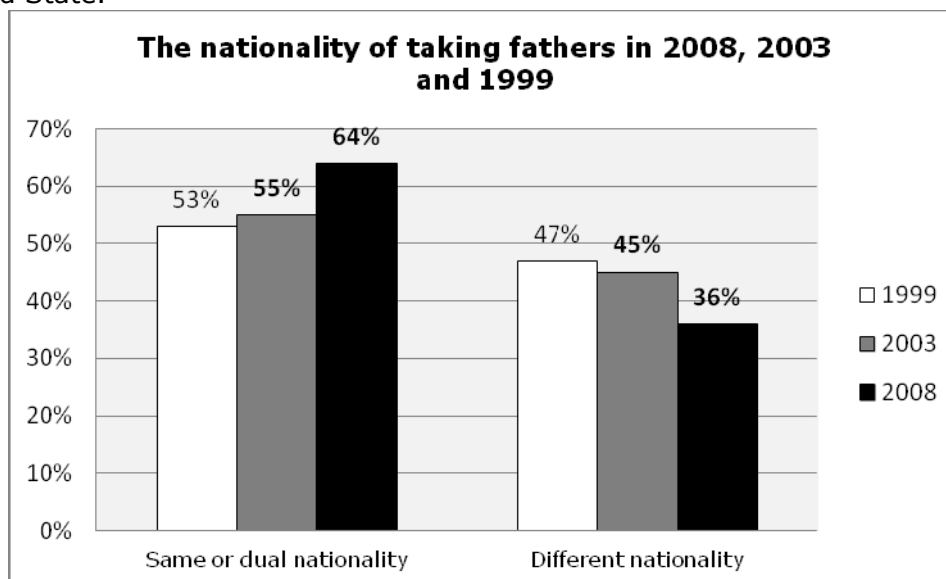


53. In 584 applications (59%) the taking mother was a national of the requested State, comprising 530 applications where this was her sole nationality (53%), 53 applications where she had dual nationality (5%) and 1 application where the taking person had

²⁴ The nationality of the taking person was not known in 431 applications. In 3 cases the relationship between the taking person and the child was not applicable because the ‘taking person’ was an institution. 1 of these applications was received by South Africa and was rejected by the Central Authority as the applicant had no rights of custody and 2 were received by UK – England and Wales and were judicially refused, 1 because the applicant had no rights of custody and 1 based on both Article 13(1) b) and the child’s objections.

²⁵ This may be either as their sole nationality or one of their dual or even triple nationalities.

triple nationality. In 407 applications (41%) the taking mother was not a national of the requested State.



54. The graph above shows the nationality of taking fathers. In 283 applications (64%) the taking father was a national of the requested State, comprising 248 applications where this was his sole nationality (56%) and 35 applications where he had dual nationality (8%). In 158 applications (36%) the taking father was not a national of the requested State.

2.6 The relationship of the taking person and the gender of the child

55. Whether the taking person was the mother or the father did not seem to have a significant impact on the gender of the child. Where the taking person was the mother exactly 50% of the children involved were female and 50% male. Where the taking person was the father of the child 46% were female and 54% male.

3. THE CHILDREN

56. Altogether there were at least 2,705 children involved in the 1,961 incoming return applications in 2008.²⁶ This equates to an average of 1.38 children per application, revealing a slight decreasing trend from averages of 1.42 children in 2003 and 1.46 in 1999.

57. The majority of applications involve single children. 69% of return applications were for single children in 2008 compared with 67% in 2003 and 63% in 1999.

58. Some States received only applications involving single children²⁷ (China – Hong Kong, 6 applications; Latvia, 8 applications; Lithuania, 6 applications, Paraguay, 2 applications; and UK – Scotland, 5 applications). 97% of applications received by Ukraine were for single children (29 out of 30 applications) and 96% of those received by Brazil (26 out of 27 applications).

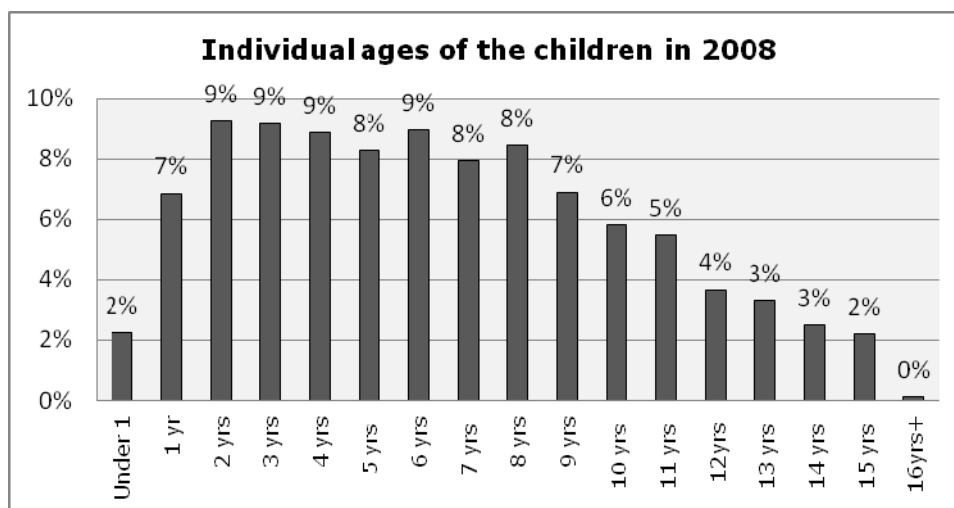
²⁶ Data was available in 1,951 of the 1,961 applications and therefore there are at least another 10 children involved in addition to the confirmed figure of 2,695 children.

²⁷ Additionally, Georgia and Slovenia which each received only 1 application and Guatemala which received 2 applications but information was only available in one.

59. By contrast, less than 50% of applications to some States were for single children.²⁸ 13% of applications to Finland (1 out of 8), 25% of applications to Iceland (1 out of 4), 40% of applications to Montenegro (2 out of 5), 42% of applications to Serbia (5 out of 12) and 44% of those to Panama (4 out of 9).

3.1 The age of the children²⁹

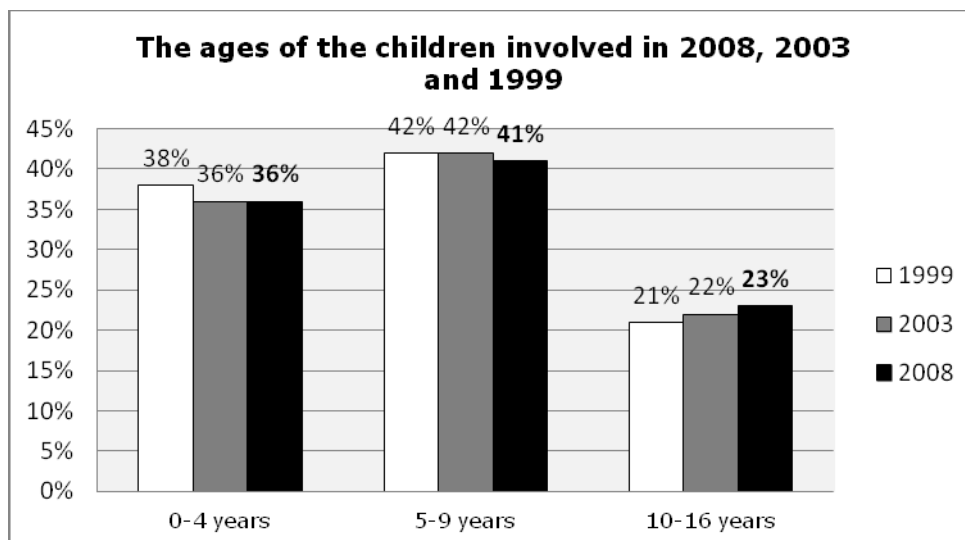
60. In 2008 the average age of a child involved in a return application was 6.4 years as against 6.3 years in 2003. If the taking person was the mother then the average age of the child was 6.0 years and if it was the father, 7.2 years. The graph below shows the distribution of the individual ages of the children.



61. The 1999 survey did not collect information about the specific age of the child but instead asked for which age band the child came within. To make a useful comparison we have arranged the 2003 and 2008 data to fit this format in the table below. Looking at these age groups a clear pattern emerges and the results have stayed virtually steady in 2008, 2003 and 1999. A large proportion of children in 2008 were aged 5-9 years and this has been the case in previous surveys. Outside this group a slightly higher proportion of older children were involved in 2008.

²⁸ Not including UK – Bermuda, which received only 1 application for 2 children.

²⁹ The age of the children involved was not available in 15 applications. Additionally, the figures for the 115 applications received by Germany have not been included as the ages of the children were recorded in age bands that did not correspond with those used in the survey. The ages of children taken to Germany have been analysed separately in the national report for Germany.



3.2 The gender of the children³⁰

62. The gender of 2,571 of the children involved in 2008 was recorded. The results show a more or less equal proportion of male and female children with 51% being male and 49% female. These results have not changed significantly in the past surveys with 49% male and 51% female in 2003 and 53% male and 47% female in 1999.

63. The proportion of male to female children varied between States. In 7 States, 60% or more of the children involved were female: Uruguay (80%, 8 out of 10 children); Cyprus (67%, 4 out of 6); Luxembourg (67%, 5 out of 6); Greece (63%, 15 out of 24); Serbia (63%, 12 out of 19); Portugal (60%, 26 out of 43); and UK – Scotland (60%, 3 out of 5).³¹

64. By contrast, in 12 States, 60% or more of the children involved were male: Costa Rica (75%, 3 out of 4 children); Croatia (75%, 3 out of 4); Honduras (75%, 3 out of 4); Estonia (71%, 5 out of 7); Iceland (71%, 5 out of 7); Panama (71%, 10 out of 14); Finland (71%, 12 out of 17); China – Hong Kong (67%, 4 out of 6); Dominican Republic (67%, 8 out of 12); Northern Ireland (64%, 14 out of 22); Chile (62%, 10 out of 16); Israel (62%, 21 out of 34); and New Zealand (60%, 30 out of 50).³²

4. THE OUTCOMES

65. The outcomes of the applications represent a crucial part of this analysis. We stress that the outcomes analysed in this report are for *all* applications received in 2008 regardless of whether an outcome was reached in that year, or later, or even at all. Applications that were still unresolved at 30 June 2010 have been classed as 'pending'.

66. From our database of outgoing applications we know of 109 applications which were received by Contracting States other than those analysed in this report. When the outcomes of these applications are added to those highlighted below, the global proportions barely change and we can consequently be reasonably confident that the figures stated below are as accurate as they can be for deducing global norms.³³

³⁰ Information about the gender of the children was unavailable in 134 applications.

³¹ Not including Guatemala as information was only available in one application, in which the child was female.

³² Not including Slovenia which received only one application, in which the child was male.

³³ When the extra 109 cases are added, the only figures to change were voluntary returns which went up to 20%, pending cases which went up to 9% and withdrawn applications which fell to 17%.

4.1 Overall outcomes³⁴

The outcomes of return applications in 2008

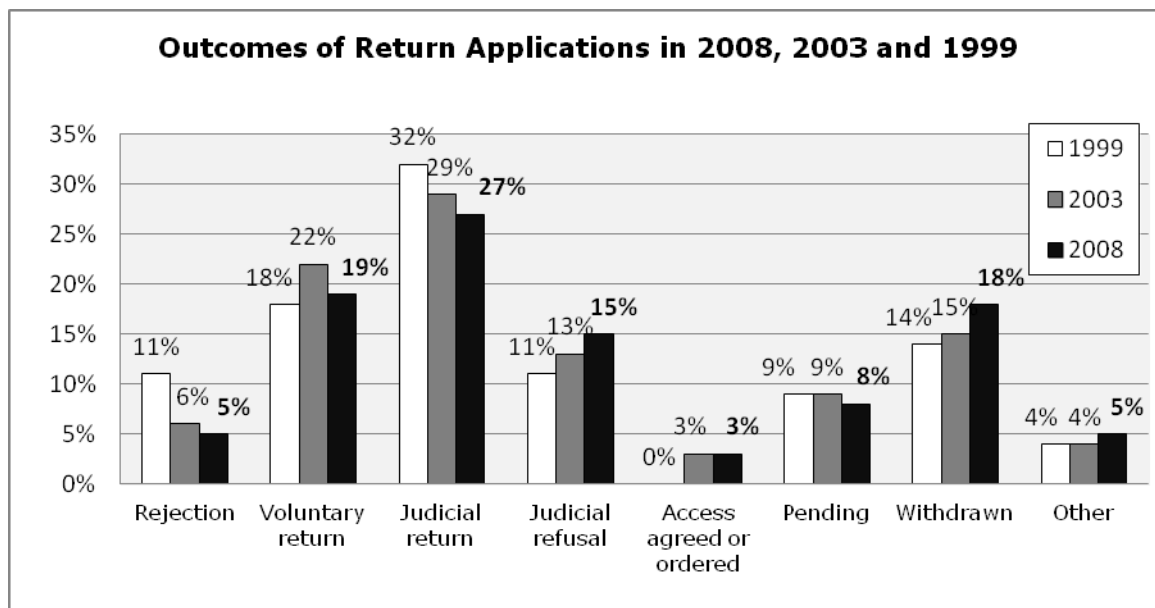
	Frequency	Percentage
Rejection	85	5%
Voluntary return	366	19%
Judicial return by consent order	124	7%
Judicial return not by consent	280	15%
Judicial return consent unknown	104	5%
Judicial refusal	286	15%
Access ordered	41	2%
Access agreed	21	1%
Other agreement	25	1%
Pending	154	8%
Withdrawn	337	18%
Other	63	3%
Different outcomes for different children	11	1%
More than one outcome	4	<1%
Total	1,901	≈100%

67. The applications recorded as 'other' comprised a miscellany of outcomes. For example: the case being decided in the domestic court of the requesting State; the child being taken out of the requested State; the child not being traced; or the child reaching the age of 16.

68. As in 2003, the 2008 survey recorded whether judicial return orders were made with or without consent. The third category of 'judicial return consent unknown' includes applications where the Central Authority did not have information about whether the parties consented. In 2008, 27% of applications ended with a judicial return compared with 29% in 2003. In 2008 this 27% comprised 7% judicial returns by consent order, 15% judicial returns without consent and 5% in which it was unknown whether the return order was with or without consent. In 2003, 9% ended with a judicial return by consent order and 20% in a judicial return without consent.

69. The 1999 survey did not record separately judicial return orders with and without consent and all judicial returns were placed into the same category. Similarly, it did not record information separately where access was agreed or ordered and such applications were classified as 'other'. To compare the outcomes from all three surveys in the graph below the judicial return applications have been combined and applications described as ending with 'different outcomes for different children', 'more than one outcome' and 'other agreements' have all been recorded as 'other'.

³⁴ The outcome was not known for 60 applications.



70. As the above table and graph show, proportionately, a judicial order for return was the most common outcome for an application in all three surveys. The overall return rate in 2008 was 46% which is lower than the 51% recorded in 2003 and 50% in 1999. The proportion of judicial returns has decreased gradually in the past three surveys and the voluntary return rate of 19% in 2008 is lower than the 22% 2003, but higher than 18% in 1999.

71. The proportion of applications that were judicially refused increased in each of the past surveys from 11% in 1999 to 13% in 2003 and 15% in 2008 and a similar pattern can be seen in the number of withdrawn applications which has risen from 14% in 1999 to 15% in 2003 and 18% in 2008.

72. The proportion of applications rejected by Central Authorities has fallen from 11% in 1999 to 6% in 2003 and 4% in 2008. The number of applications still pending at the cut off date has fallen to 8% from 9% in previous surveys.

73. The 2008 and 2003 surveys recorded separately the applications which ended in an access agreement or order, rather than placing them in the 'other' category as in 1999. In both years 3% of all applications ended in this way. In 2008, access was ordered in 41 applications and agreed in 21. This can be compared with the 2003 findings where there were 26 orders for access and 12 agreements.

4.2 The applications that went to court

74. In 2008, out of the 1,961 applications received, 857 were decided in court (44%). This has remained virtually constant from past surveys with 44% of applications being decided in court in 2003 and 43% in 1999.

75. In 2008, of the applications that were decided in court, 61% ended in a return, 34% in a refusal and 5% in orders for access.³⁵ This can be compared with 66% return

³⁵ To be comparable with previous surveys which only included applications ending in judicial return, judicial refusal or orders for access, these figures are calculated from 835 applications: 508 ending in a judicial return, 286 ending in a judicial refusal and 41 applications where access was judicially granted. If all 857 applications that were decided in court were included then 59% ended in a return, 33% in a refusal and 5% in access. The remaining 3% comprised 10 'other' outcomes, 7 applications ending in different outcomes for different children, 3 applications ending in more than one outcome and 2 applications that were withdrawn (both were decided in court with one being changed to an access application).

Poland	4	10	1	10		26	2	2	12		67
Portugal	1	13		6		4		5	3		32
Romania	2	10	12	3		9		6	8	1	51
Serbia	1	5						2	2	1	11
Slovenia	1										1
South Africa	1	4	1	2		4		2	2	1	17*
Spain		19	3	9	1	15	1	1	13	2	64*
Sweden	1	3	1					2	2		9*
Switzerland	5	2		4		1	2	3	6	3	26
Turkey	5	18	4	10		11		7	6	2	63
Ukraine	9	7		2		5		4	3		30
UK - England and Wales	3	25	1		92	15	20	1	30	12	199*
UK - Scotland		3	2								5*
UK - Northern Ireland		3	5	1					1	3	13
UK - Bermuda									1		1
USA	1	51	8	60		20	12	34	87	10	283
Uruguay		1		2		1		1	2		7
Total	85	366	124	280	104	286	62	154	337	103	1,901

*Totals marked with an asterisk indicate that the number does not represent all applications received by that State as the outcomes for some applications are missing. Overall there were 60 applications where the information on outcome was missing

76. The table above enables comparisons to be made between the outcomes of applications received by each State and the global norm. Later in the report we analyse individual Contracting States. Nevertheless, it is worth pointing out some striking differences here.

77. The global average proportion of applications rejected by Central Authorities in 2008 was 5%. A high proportion of applications were rejected by the Central Authorities of: Montenegro (40%, 2 out of 5); China – Hong Kong (33%, 2 out of 6); Ukraine (30%, 9 out of 30, though it should be noted that 7 of these applications were rejected because the wrongful removal occurred before the Convention entered into force between the Contracting States³⁶) and Switzerland (19%, 5 out of 26).³⁷

78. Return rates also varied considerably between States compared with the global return rate of 46%. The highest overall return rate was in UK – Scotland where all the applications where information was available ended with a voluntary return, judicial return by consent order or judicial return without consent.³⁸ Other States with high return rates were: Dominican Republic (86%, 6 out of 7 applications); Cyprus (75%, 3 out of 4); Hungary (75%, 3 out of 4); Latvia (75%, 6 out of 8); Northern Ireland (69%, 9 out of 13); and New Zealand (65%, 24 out of 37).

79. 19% of applications globally ended in a voluntary return. The Dominican Republic had a particularly high voluntary return rate (71%, 5 out of 7 applications) compared with the global average of 19%, as did: Honduras (60%, 3 out of 5) and UK – Scotland (60%, 3 out of 5).

80. Globally, 15% of applications ended in a judicial refusal. A particularly high proportion of applications ended in this way in: Estonia (80%, 4 out of 5 applications) and Costa Rica (67%, 2 out of 3).

³⁶ The applications rejected for this reason came from Argentina, Greece, Malta, Slovakia, Spain, Turkey and the USA. The Convention came into force in Ukraine in 2006.

³⁷ These figures do not include Slovenia which received only one application or Paraguay which rejected 1 application out of 2.

³⁸ Information was not available on the outcomes of 2 applications received by Scotland.

81. Return applications ended in access more frequently in some States than in others. Globally 3% of applications ended in an order or agreement for access. In Ireland 15% (7 out of 48) ended this way, 11% in Greece (2 out of 19) and in England and Wales, 10% (20 out of 199) compared with the global average of 3%.

82. Globally, 8% of applications were still pending at the cut off date of 30 June 2010 but particularly high proportion were still pending at this date in Argentina (36%, 8 out of 22), Greece (32%, 6 out of 19), and Cyprus (25%, 1 out of 4). In Guatemala both applications were pending.

83. We now look at individual outcomes in more detail.

4.4 Return applications where access was ordered or agreed

84. Relatively few applications were recorded as ending with an access order or agreement for access. Only 3% of all applications ended in this way in both 2008 and 2003.

85. This number may be deceptively low as some agreements for access may have been recorded as 'other'. In 2008, 26 applications (1%) were recorded as 'other' but with some form of agreement reached. Some of these agreements were for the child to remain with the taking person in the requested State but it is likely that some were also agreements for access. Information about the content of the agreement was often not provided.

86. The table below shows that, in 2008, when access was the outcome of a return application it was more likely to be judicially granted with 66% being court ordered with consent or otherwise. In 2003 this figure was higher at 68%.

Return applications ending in agreements and orders for access in 2008 and 2003

	2008		2003	
	Frequency	Percentage	Frequency	Percentage
Access judicially granted without consent	35	56%	7	18%
Consent orders for access made	6	10%	19	50%
Access agreed, no orders	21	34%	12	32%
Total	62	100%	38	100%

87. These findings cannot be compared with the 1999 survey as decisions for access made in that year were not recorded separately.

88. As mentioned previously, the Central Authorities of Ireland, Greece and England and Wales made proportionately more access agreements or orders than any other State (15%, 11% and 10%, respectively).

4.5 Withdrawn applications

89. The proportion of applications which were withdrawn in 2008 rose to 18% from 15% in 2003 and 14% in 1999. The reasons for withdrawal were often not stated but,

where known, they were diverse. As was found in previous surveys, many applications were withdrawn because the applicant ended contact with their lawyer or the Central Authority. Other applications were withdrawn because the taking person had left the requested State or due to a custody award taking place in the requesting State's domestic court.

90. In 2003 it was found that some applicants withdrew their application after early advice regarding the strength of their case, or lack of it, but no such evidence was expressly found in the 2008 survey.

4.6 The reasons for rejection by the Central Authorities³⁹

91. In 2008, 85 applications were rejected by the Central Authorities in the requested State (5% of all applications). Under Article 27 Central Authorities are not bound to accept applications where the requirements are not fulfilled or if the application is otherwise not well founded. For example, if the child involved is over 16 or not located.

92. As this analysis deals with incoming applications, all of the above applications were sent either by the Central Authority of the requesting State or by an individual to the Central Authority of the requested State, which then rejected them. Rejection rates vary between States and, as has been highlighted in previous reports, practices regarding rejections may vary in both requested and requesting Contracting States and may depend on individual policy as well as experience of the Convention. Some Central Authorities may reject an application before it is sent; others may be more willing to reject an application upon receipt. We do not have any information on applications that were rejected by the Central Authority of the requesting State before they were even passed on to the requested State.

93. Some States did not reject any applications. Notably: Spain, which received 64 applications; Ireland, which received 48; Belgium, which received 40; and Colombia, which received 31.⁴⁰ Conversely, as mentioned previously, a high proportion of applications were rejected by the Central Authorities of: Paraguay (50%, 1 out of 2 applications); Montenegro (40%, 2 out of 5); China – Hong Kong (33%, 2 out of 6); Ukraine (30%, 9 out of 30) and Switzerland (19%, 5 out of 26).

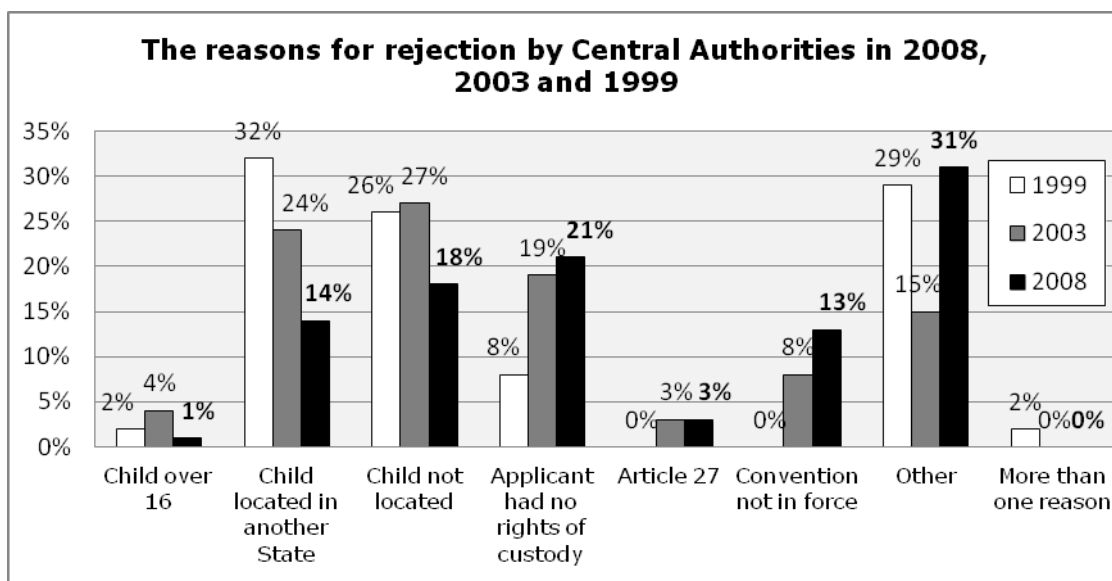
94. The rate of rejection has fallen considerably from 102 applications (11%) in 1999, to 76 (6%) in 2003 and 85 (5%) in 2008. The table and graph below show the reasons why applications were rejected by the Central Authorities in 2008, 2003 and 1999. In 2008, the most common sole reasons for rejection of an application were that the applicant had no rights of custody or that the child could not be located.

³⁹ The reasons for rejection were not available in 7 applications.

⁴⁰ The outcomes were not known for 24 applications received by Spain and 2 applications received by Colombia. Additionally Chile, Costa Rica, Croatia, Cyprus, Denmark, Ecuador, Estonia, Finland, Georgia, Guatemala, Honduras, Hungary, Iceland, Israel, Latvia, Luxembourg, Norway, UK (Central Authorities of Northern Ireland, Scotland and Bermuda) and Uruguay also rejected no applications but the overall numbers were lower.

The reasons for rejection by Central Authorities in 2008

	Frequency	Percent
Child over 16	1	1%
Child located in another State	11	14%
Child not located	14	18%
Applicant had no rights of custody	16	21%
Other Article 27	2	3%
Convention not in force	10	13%
Other	24	31%
Total	78	100%



95. The graph above compares the reasons for rejection of applications in 2008 with previous surveys. In 2008 it is striking how many applications were rejected for 'other' reasons. The 24 rejections (31%) that fell into this category were decided for various reasons. 7 applications were rejected because the child was found not to be habitually resident in the requesting State;⁴¹ 2 were rejected because the removal was not wrongful; in 2 applications it was found that the applicant had consented to the removal; in 1 the mother had a court order allowing her to relocate; and in a further application the children were with the applicant in the requesting State on an access visit at the time the application was made.

96. Only 1 application was rejected in 2008 because the child was over 16. However, this does not take into account that at least 6 applications were recorded as 'other' where the child 'aged out' or, in other words, reached the age of 16 during the proceedings.

97. In 2008, fewer applications were rejected because the child was located in another State or not located at all. Not only has the proportion of such rejections decreased but the numbers have too. In 2008, 11 applications (14%) were rejected because the child was located in another State compared with 19 (24%) in 2003 and 33 (32%) in 1999. The child was not located in 14 applications (18%) in 2008 compared with 21 (27%) in 2003 and 27 (26%) in 1999. Conversely, proportionately more applications were

⁴¹ These 7 applications were received by France, Mexico, Netherlands and Turkey.

rejected because the applicant had no rights of custody (21% in 2008 as against 19% in 2003 and 8% in 1999).

98. A higher proportion of rejected applications (13%) were rejected because the application was made before the Convention had entered into force compared with 8% of rejected applications in 2003 and none in 1999.

The reasons for rejection by the requested States

	Child over 16	Child located in another State	Child not located	Applicant had no rights of custody	Other - Article 27	Convention not in force	Other	Total
Argentina							1	1
Australia				3			4	7
Austria			2					2
Brazil		3		2				5
Bulgaria		1				1		2
Canada		3						3
China - Hong Kong							2	2
Czech Republic			1					1
Dominican Republic			1					1
France							2	2
Germany			3		2	1	3	9
Greece							1	1
Lithuania		1						1
Mexico							2	2
Montenegro			1	1				2
Netherlands		1	1	1		1	1	5
New Zealand							2	2
Paraguay			1					1
Poland				1				1
Portugal				1				1
Romania				2				2
Slovenia				1				1
South Africa				1				1
Sweden			1					1
Switzerland		2	1				1	4
Turkey			2	2			1	5
Ukraine				1		7	1	9
UK - England and Wales	1						2	3
USA							1	1
Total	1	11	14	16	2	10	24	78

99. The table above shows the reasons for rejection by the States that cited them. 7 out of the 9 applications rejected by Ukraine were rejected because the wrongful removal occurred before the Convention entered into force between the Contracting States.⁴² The other 2 were rejected because the applicant had no rights of custody and because the original application and documents were not received.

⁴² The applications rejected for this reason came from Argentina, Greece, Malta, Slovakia, Spain, Turkey and the USA. The Convention came into force in Ukraine in 2006.

4.7 The reasons for judicial refusal

100. The Convention itself provides, by Articles 3, 12, 13 and 20, conditions for and exceptions to the obligation to make a return order by which *judicial* authorities may refuse a return application.

101. In 2008, 286 applications were refused by the courts. This is a larger number than the 157 refused in 2003 and 107 in 1999, and a larger proportion, at 15%, compared with 13% in 2003 and 11% in 1999.

102. Before analysing the data it is worth making the point that what is recorded here are actual refusals and does not reflect the number of applications in which these exceptions had been argued unsuccessfully.

103. Of the 286 refused applications the reasons for refusal were available in 262. Additionally, 4 applications ending in different outcomes for different children and 3 applications ending in more than one outcome involved a judicial refusal making a total of 293 refused applications and 269 applications where the reasons for refusal were available.

The sole reasons for judicial refusal⁴³

	Frequency	Percentage
Child not habitually resident in requesting State	48	18%
Applicant no rights of custody	19	7%
Art 12	29	11%
Art 13(1) a) not exercising rights of custody	10	4%
Art 13(1) a) consent	11	4%
Art 13(1) a) acquiescence	13	5%
Art 13(1) b)	56	21%
Child's objections	28	10%
More than one reason	48	18%
Other	7	3%
Total	269	≈100%

104. In addition to the figures above, 7 applications were refused at first instance but were pending an appeal and so their overall outcome was said to be 'pending'. 4 of these applications were refused based solely on Article 13(1) *b*), 1 application was refused based on Article 13(1) *a*) consent, 1 because the applicant had no rights of custody and 1 based on multiple reasons (Art. 13(1) *b*) and 13(1) *a*) consent). As these applications were not finalised by the cut off date of 30 June 2010 they will not be included in the analysis below.

⁴³ The reasons for refusal of 24 applications were not available.

The sole reasons for refusal in 2008, 2003 and 1999

	2008		2003		1999	
	Frequency	Percentage	Frequency	Percentage	Frequency	Percentage
Child not habitually resident in requesting State	48	18%	21	15%	12	12%
Applicant no rights of custody	19	7%	11	8%	8	8%
Art 12	29	11%	17	12%	11	11%
Art 13(1) a) not exercising rights of custody	10	4%	4	3%	3	3%
Art 13(1) a) consent	11	4%	7	5%	4	4%
Art 13(1) a) acquiescence	13	5%	7	5%	4	4%
Art 13(1) b)	56	21%	26	18%	21	21%
Child's objections	28	10%	13	9%	13	13%
More than one reason	48	18%	33	23%	17	17%
Other	7	3%	5	3%	6	6%
Total	269	≈100%	144	≈100%	99	≈100%

105. The proportions for each reason for refusal have remained relatively constant in past surveys. In all surveys the most common sole reason for refusal has been based on Article 13(1) *b*), followed by a finding that the child was not habitually resident in the requesting State, the child's objections and Article 12 second paragraph.

106. Another common feature of the three surveys is that a high proportion of applications were refused for multiple reasons. In 2008, 48 applications were refused for more than one reason. Indeed, in these 48 applications there were a total of 121 reasons for refusal. This can be compared with 93 reasons from 33 applications in 2003 and 36 reasons in 17 applications in 1999. The above mentioned 121 reasons have been set out in the table below.

Bases for multiple reasons for judicial refusal

	Frequency
Child not habitually resident in requesting State	5
Applicant no rights of custody	9
Art 12	17
Art 13(1) <i>a</i>) not exercising rights of custody	13
Art 13(1) <i>a</i>) consent	5
Art 13(1) <i>a</i>) acquiescence	4
Art 13(1) <i>b</i>)	35
Child's objections	30
Art 20	2
Other	1
Total	121

107. As with the sole reasons for refusal, Article 13(1) *b*) was the reason for refusal that was most often relied upon in combination with other reasons. Adding this to the 56 applications in which it was the sole reason for refusal, Article 13(1) *b*) was cited successfully in 91 out of the 269 applications where reasons were given making it the sole or partial reason in 34% of refused applications. The child's objections were cited in 58 applications (22%) and Article 12 in 46 (17%). A finding that the child was not habitually resident in the requesting State was not often relied upon with other reasons and was more likely to be cited as the sole reason. Conversely, Article 20 was not cited as the sole reason for refusal in 2008 but was a combined reason for refusal in 2 applications. Article 20 was not a sole reason for refusal in 2003 and in 1999 it was not even cited as a partial reason for refusal.

108. The table below combines the sole reasons with the multiple reasons for refusal to make a total of 342 reasons. Once again, the most common reasons for refusal were Article 13(1) *b*) (27%), the child's objections (17%), a finding that the child was not habitually resident in the requesting State (15%) and Article 12 (13%).

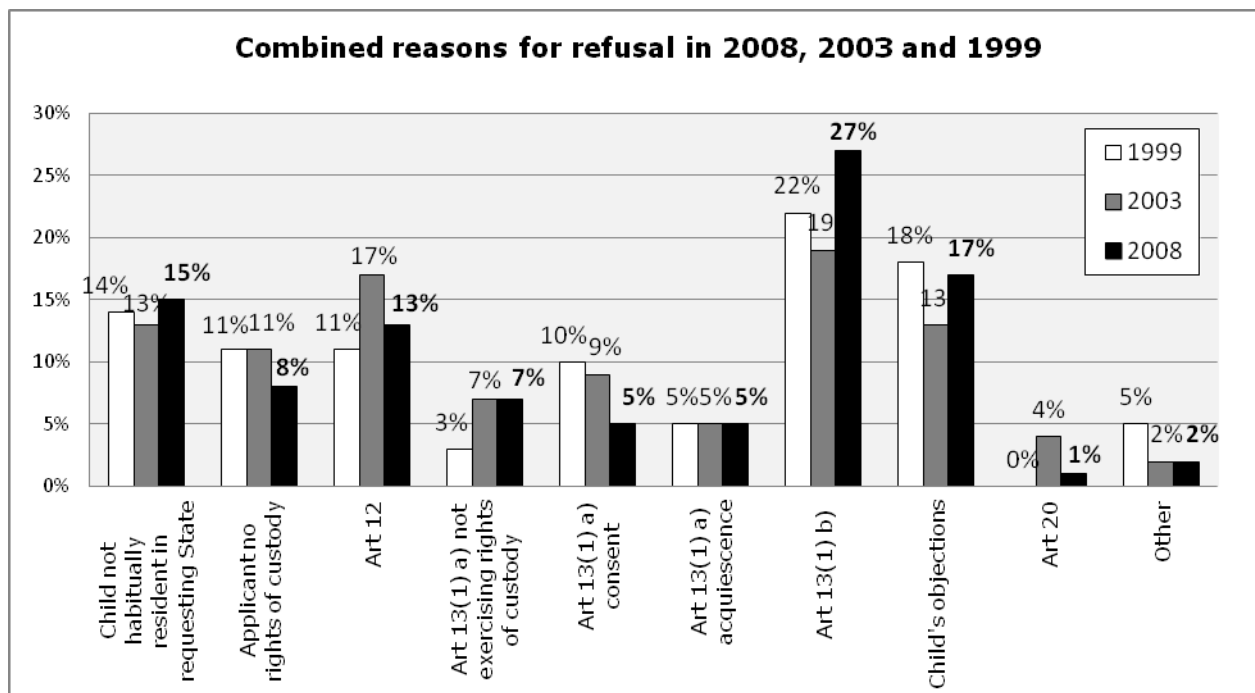
Combined reasons for judicial refusal

	Frequency	Percentage
Child not habitually resident in requesting State	53	15%
Applicant no rights of custody	28	8%
Art 12	46	13%
Art 13(1) a) not exercising rights of custody	23	7%
Art 13(1) a) consent	16	5%
Art 13(1) a) acquiescence	17	5%
Art 13(1) b)	91	27%
Child's objections	58	17%
Art 20	2	1%
Other	8	2%
Total	342	100%

109. The table and graph below compare the combined reasons for judicial refusal in 2008 with those in 2003 and 1999.

Combined reasons for judicial refusal in 2008, 2003 and 1999

	2008		2003		1999	
	Frequency	Percentage	Frequency	Percentage	Frequency	Percentage
Child not habitually resident in requesting State	53	15%	27	13%	17	14%
Applicant no rights of custody	28	8%	22	11%	13	11%
Art 12	46	13%	34	17%	13	11%
Art 13(1) a) not exercising rights of custody	23	7%	15	7%	4	3%
Art 13(1) a) consent	16	5%	19	9%	12	10%
Art 13(1) a) acquiescence	17	5%	10	5%	6	5%
Art 13(1) b)	91	27%	38	19%	26	22%
Child's objections	58	17%	26	13%	21	18%
Art 20	2	1%	8	4%	0	0%
Other	8	2%	5	2%	6	5%
Total	342	100%	204	100%	118	100%



110. Although in broad terms there is a common pattern for the reasons for refusal over the three surveys and, in particular, the most common successfully invoked exception has always been Article 13(1) *b*, there is a marked increase in refusals based on Article 13(1) *b* in 2008. The second most common reason for refusal in 2008 was the child's objections, the third was a finding that the child was not habitually resident in the requesting State and the fourth was Article 12. These findings reflect the findings of the 1999 survey but not those of 2003. The key differences are that, in 2008 and 1999, a significant proportion of applications were refused based on the child's objections and less reliance on Article 12 which, in 2003, assumed more importance.

4.7.a The child's objections and the age of the child⁴⁴

111. 86 children were involved in the 58 applications in which the child's objections were the sole or partial reason for refusal. The average age of an 'objecting child' was 10.7 years with the lowest age being 5 years (4 applications) and the highest being 15 years (6 applications).

112. The following table compares the distribution of the age bands of children involved in applications refused based on their objections in all three surveys. From this it can be seen that, in 2008, a larger proportion refusals were based on the objections of children under 8. The proportion of children under 8 was 14% in 2008 compared with none in 2003 and 5% in 1999. Conversely, the proportion of refusals based on objections by older children has decreased. In 2008, 16% of objecting children were 13 years or over compared with 45% in 2003 and 29% in 1999.

⁴⁴ The age of the 'objecting child' was not available for 12 of the children.

The age bands of 'objecting children' in 2008, 2003 and 1999

	2008		2003		1999	
	Frequency	Percentage	Frequency	Percentage	Frequency	Percentage
Under 8 years	10	14%	0	0%	1	5%
8-10 years	21	28%	5	25%	6	29%
11-12 years	31	42%	6	30%	8	38%
13 years or over	12	16%	9	45%	6	29%
Total	74	100%	20	100%	21	100%

4.7.b The reasons for judicial refusal and the relationship between the taking person and the child

113. Where the taking person was the mother of the child, 17% of applications were refused. If the taking person was the father this figure was 11%. This can be compared with the 2003 survey where 14% of applications were refused if the taking person was the mother and 9% if it was the father. In 1999, 7% of applications involving taking mothers were refused and 11% of applications involving fathers.

114. The table below analyses refusals according to the relationship between the taking person and the child. Of the 293 applications refused in 2008 (including 3 applications ending in more than one outcome and 4 applications where there were different outcomes for different children), both the reasons for refusal and the relationship between the taking person and the child were available in 264 applications.

115. In 203 of these applications the taking person was the mother of the child, in 53 the taking person was the father and in 8 the taking person was not a parent (comprising 3 grandparents, 2 other relatives, 2 institutions and 1 step parent).

The sole reason for refusal and the relationship between the taking person and the child⁴⁵

	Mother		Father	
	Frequency	Percentage	Frequency	Percentage
Child not habitually resident in requesting State	37	18%	10	19%
Applicant had no rights of custody	13	6%	2	4%
Art 12	19	9%	7	13%
Art 13(1) a) not exercising rights of custody	6	3%	3	6%
Art 13 a) consent	10	5%	1	2%
Art 13(1) a) acquiescence	10	5%	3	6%
Art 13(1) b)	52	26%	3	6%
Child's objections	15	7%	12	23%
More than one reason	36	18%	10	19%
Other	5	2%	2	4%
Total	203	≈100%	53	≈100%

⁴⁵ Information was unavailable in 5 applications.

116. The most common reason for refusal where the taking person was the mother of the child was Article 13(1) *b*). In 52 out of the 56 applications in which Article 13(1) *b*) was the sole reason for refusal, the taking person was the mother (93%).⁴⁶ In 2003 this figure was 65% and in 1999 it was 90%.

117. Article 13(1) *b*) has not always been proportionately more commonly relied upon in applications of taking mothers. In 2008, 26% of refusals where the taking person was the mother were on grounds of Article 13(1) *b*) and 6% in the case of fathers. The 1999 survey produced similar findings (26% and 10%, respectively) but, in 2003, 16% of refusals for taking mothers were based on Article 13(1) *b*) and 24% of refusals for taking fathers.

118. Where the taking person was the father of the child, applications were most commonly refused on the basis of the child's objections with 23% of all refusals being for this reason. This is a far higher proportion than the 7% if the application involved a taking mother. This trend is also evident in previous surveys. In 2003, 24% of refusals where the taking person was the father were decided on the child's objections as against 16% where the taking person was the mother and in 1999 this was 27% for taking fathers and 4% for mothers.

119. As can be seen in the table above, 36 applications where the taking person was the mother and 10 applications where the taking person was the father were refused based on more than one reason. The table below combines these multiple reasons with the sole reasons for refusal.

The combined reasons for refusal and the relationship between the taking person and the child

	Mother		Father	
	Frequency	Percentage	Frequency	Percentage
Child not habitually resident in requesting State	41	16%	11	15%
Applicant had no rights of custody	20	8%	3	4%
Art 12	34	13%	9	13%
Art 13(1) a) not exercising rights of custody	18	7%	4	6%
Art 13 a) consent	14	5%	2	3%
Art 13(1) a) acquiescence	12	5%	5	7%
Art 13(1) <i>b</i>)	78	30%	11	15%
Child's objections	33	13%	22	31%
Other	6	2%	2	3%
Article 20	0	0%	2	3%
Total	256	100%	71	100%

120. The combined reasons for refusal show a similar pattern to the sole reasons for refusal. Where the taking person was the mother the most common reason for refusal was Article 13(1) *b*) which made up 30% of all reasons for refusal compared with 15% if the taking person was the father. The most common reason for refusal where the taking

⁴⁶ In 3 applications refused based on Art. 13(1) *b*) the taking person was the father and in the remaining application the 'taking person' was two grandparents.

person was the father was the child's objections which made up 31% of reasons for refusal compared with only 13% if the taking person was the mother.

4.7.c Reasons for judicial refusal and status as carer of the taking person

121. Out of the 286 refused applications, the 'carer status' of the taking person was only known in 52. In 40 of these 52 the taking person was the primary or joint primary carer of the child (77%).⁴⁷ A further application ending in different outcomes for different children where the return of 1 child was judicially refused the taking person was a joint primary carer. This makes a total of 53 applications ending in a judicial refusal where the 'carer status' of the taking person was known.

122. Of these 53 applications, the reasons for refusal were known in 41 comprising 31 applications in which the taking person was a primary carer (7 of which were decided for more than one reason making a combined total of 41 reasons for refusal) and 10 applications in which the taking person was a non-primary carer (3 of which were decided for more than one reason making a total of 13 reasons for refusal).

123. The table below shows these reasons for refusal and the status as carer of the taking person in the refused applications.

The reasons for refusal and the status as carer of the taking person⁴⁸

	Primary or joint-primary carer		Non-primary carer	
	Frequency	Percentage	Frequency	Percentage
Child not habitually resident in requesting State	8	20%	2	15%
Applicant no rights of custody	8	20%	1	8%
Art 12	3	7%	0	0%
Art 13(1) a) not exercising rights of custody	0	0%	0	0%
Art 13(1) a) consent	3	7%	0	0%
Art 13(1) a) acquiescence	4	10%	3	23%
Art 13(1) b)	9	22%	3	23%
Child's objections	5	12%	4	31%
Art 20	0	0%	0	0%
Other	1	2%	0	0%
Total	41	100%	13	100%

124. Article 13(1) b) made up 22% of the 54 reasons for refusal considered. 9 applications were refused for this reason where the taking person was a sole primary or joint-primary carer (22%) and 3 applications where the taking person was a non-primary carer (23%). Some reasons for refusal were only relied upon within this sample if the taking person was a sole primary or joint-primary carer (Art. 12 in 3 applications and Art. 13(1) a) consent in 3 applications). A finding that the child was not habitually resident in the requesting State was more frequently relied upon if the taking person was a primary or joint primary carer (20%, 8 applications, compared with 15%, 2 applications where the taking person was a non-primary carer) as was a finding that the applicant had no rights of custody (20%, 8 applications, compared with 8%, 1 application).

⁴⁷ This can be broken down into 22 applications where the taking person was the sole primary carer (42%) and 18 applications where they were a joint-primary carer (35%).

⁴⁸ Information on the status as carer of the taking person was unavailable for 221 applications.

125. The most frequently relied upon reason for refusal where the taking person was not a primary carer was the child's objections (31%, 4 applications) compared with applications where the taking person was a primary or joint-primary carer (12%, 5 applications). Article 13(1) *a*) acquiescence was relied upon in 3 applications where the taking person was a non-primary carer (23%) compared with 4 applications where the taking person was a primary or joint-primary carer (10%).

126. In addition, 1 application which was pending an appeal at the cut off date of 30 June 2010 had been refused at first instance. This application involved a taking person who was a primary carer and was refused based on Article 13(1) *b*). This application is not included in the table above.

4.7.d Reasons for judicial refusal and the nationality of the taking person⁴⁹

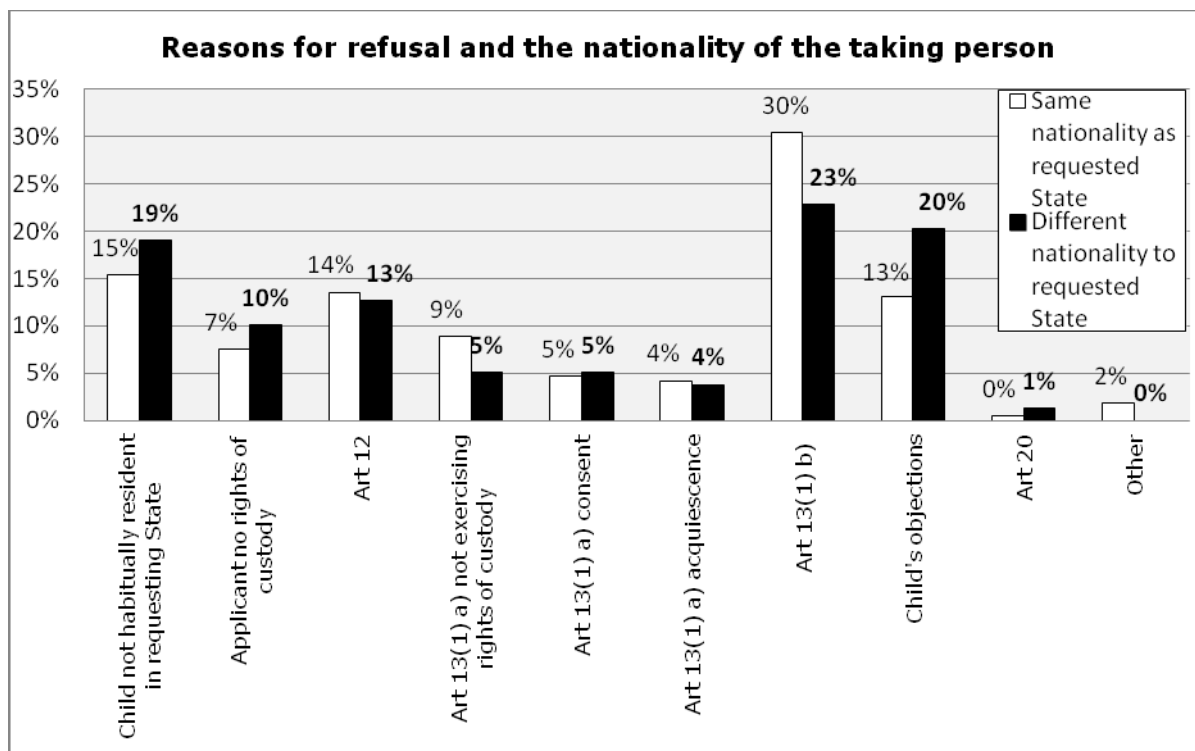
127. The graph below shows the reasons for refusal against the nationality of the taking person and compares the reasons cited when the taking person went to a State of which they were a national to those where the taking person was not a national of the requested State.

128. Where the taking person was the same nationality as the requested State⁵⁰ there were significantly more Article 13(1) *b*) refusals, 30% (65 applications) compared with 23% (18 applications) if the taking person went to a State of which they were not a national.

129. By contrast, where the taking person went to a State of which they were a national there were fewer refusals based on the child's objections (13%, 28 applications, compared with 20%, 16 applications), and fewer findings that the child was not habitually resident in the requesting State (15%, 33 applications, compared with 19%, 15 applications).

⁴⁹ The reasons for refusal and the nationality of the taking person were known for 225 applications.

⁵⁰ Including taking persons with more than one nationality.



4.7.e The reasons for judicial refusal and the requested States

130. As emphasised in previous reports, a high refusal rate does not necessarily indicate a misapplication of the Convention as refusals are permitted under it.

131. In 2008, Mexico made the greatest number of judicial refusals with 34 out of the 168 applications it received ending this way (20%).

132. The highest proportion of judicial refusals was in Estonia where 80% (4 out of 5 applications) were refused followed by Costa Rica with 67% (2 out of 3 applications).

133. Looking at States which received a larger number of applications, 43% of Austria's 28 applications were refused (12 applications), 38% of Bulgaria's 21 applications (8 applications) and 39% of the 67 applications received by Poland (26 applications). It is also interesting to note that out of the 26 refusals by Poland, 16 of the reasons for refusal were based on Article 13(1) b) (64%).

134. The reasons for refusal were known in 262 of the 286 refused applications.⁵¹ A further 3 applications ended with more than one outcome including a judicial refusal (received by Canada, France and Germany) and 4 applications ended in different outcomes for different children with the application for return of one child being refused (received by Canada, Panama, Turkey and USA) giving a total of 269 reasons for refusal.

⁵¹ The reasons for refusal were unavailable for 24 applications: 1 from Australia, 1 from Belgium, 11 from Italy, 1 from Lithuania, 4 from Mexico, 1 from Poland, 1 from South Africa, 2 from Turkey, 1 from USA and 1 from Uruguay. Italy, Lithuania and Uruguay are not included in the table above as none of their refused applications had any reasons for refusal.

The sole reasons for refusal and the requested State

	Child not habitually resident in requesting State	Applicant had no rights of custody	Art 12	Art 13(1) a) not exercising rights of custody	Article 13(1) a) consent	Art 13(1) a) acquiescence	Art 13(1) b)	Child's objections	More than one reason	Other	Total
Argentina	1										1
Australia	3	1				4	2	2	3		15*
Austria	2	1	1	1			5	1	1		12
Belgium	1	1						2	2		6*
Bulgaria							3		5		8
Canada	1	1	3							1	6†
Chile						1	1		1		3
Colombia		1	3						1		5
Costa Rica	1	1									2
Czech Republic									1		1
Denmark									1		1
Ecuador			1						1		2
Estonia	1								3		4
Finland	2										2
France	4		2		1		2	1	3		13†
Germany	1	3	3			2	4	4	1	4	22†
Greece									1		1
Honduras										1	1
Iceland					1						1
Ireland	1										1
Israel	3										3
Luxembourg								1			1
Mexico	11		2	4	1			4	8		30*
Netherlands	3			1		1	2	1		1	9
New Zealand					1	1		1			3
Norway	2	1									3
Panama			1	1					4		6†
Poland	1	4	1			2	16	1			25*
Portugal		2					1		1		4
Romania	1		1		1		4	1	1		9
South Africa			2					1			3*
Spain			2	3	2		1	2	5		15
Switzerland	1										1
Turkey						2	6		2		10*†
Ukraine	1	2	1				1				5
UK - England and Wales	3	1	1		1		4	2	3		15
USA	4		5		3		4	4			20*†
Total	48	19	29	10	11	13	56	28	48	7	269

*Totals marked with an asterisk indicate that the reasons for refusal were unavailable for some refused applications.

†Totals marked with a cross indicate that they include applications that did not end in a judicial refusal overall but in more than one outcome or different outcomes for different children.

135. As can be seen in the table above, 48 applications were refused based on more than one reason. These 48 applications were refused for a total of 121 reasons making a combined total of 342 reasons for refusal.

The combined reasons for judicial refusal and the contracting State which received the application

	Child not habitually resident in requesting State	Applicant had no rights of custody	Art 12	Art 13a not exercising rights of custody	Article 13(1) a) consent	Art 13(1) a) acquiescence	Art 13(1) b)	Child's objections	Other	Article 20	Total
Argentina	1										1
Australia	4	2				5	4	3			18*
Austria	2	1	1	2			6	1			13
Belgium	1	3	1				2	3			10*
Bulgaria			2	3			7	1		1	14
Canada	1	1	3						1		6†
Chile	1					1	2				4
Colombia		2	3					1			6
Costa Rica	1	1									2
Czech Republic		1	1				1				3
Denmark					1		1				2
Ecuador			2					1			3
Estonia	2				1		3	1			7
Finland	2										2
France	5		2	2	1	1	4	2	1		18†
Germany	1	3	3		1	2	4	5	4		23†
Greece			1			1	1				3
Honduras									1		1
Iceland					1						1
Ireland	1										1
Israel	3										3
Luxembourg								1			1
Mexico	12	1	7	8	1	1	8	15			53*
Netherlands	3			1		1	2	1	1		9
New Zealand					1	1		1			3
Norway	2	1									3
Panama		2	2	4	1		1	1			11†
Poland	1	4	1			2	16	1			25*
Portugal		2					2	1			5
Romania	1		1		1		5	2			10
South Africa			2					1			3*
Spain		1	5	3	3		3	6		1	22
Switzerland	1										1
Turkey						2	8	2			12*†
Ukraine	1	2	1				1				5
UK- England and Wales	3	1	3		1		6	4			18
USA	4		5		3		4	4			20*†
Total	53	28	46	23	16	17	91	58	8	2	342

136. The reasons for refusal that were relied upon by each State in 2008 varied significantly. The most common reason for refusal globally was Article 13(1) *b*) (27%). In Turkey Article 13(1) *b*) made up 67% of all reasons for refusal (8 out of 12 reasons) and in Poland 64% (16 out of 25 reasons). It was 50% of the reasons for refusal in Bulgaria (7 out of 14 reasons), Romania (5 out of 10 reasons), Chile (2 out of 4 reasons) and Denmark (1 out of 2 reasons).

137. Globally, the second most common reason for refusal was based on the child's objections (17%). The child's objections made up 33% of the reasons for refusal in applications refused by New Zealand and South Africa (both 1 out of 3 reasons), 30% in Belgium (3 out of 10 reasons), 28% in Mexico (15 out of 53 reasons) and 27% in Spain (6 out of 22 reasons).

138. A finding that the child was not habitually resident in the requesting State made up 15% of the reasons for refusal globally. In Israel and Finland 100% of their refused applications were based on such a finding (3 and 2 reasons for refusal respectively).⁵² The largest number of refusals based on the child's habitual residence was in Mexico (12 out of 53 reasons) and France (5 out of 18).

139. The global rate of refusal based on Article 12 second paragraph was 13%. 67% of refusals were based on Article 12 in Ecuador and South Africa (both 2 out of 3 applications) and 50% in Colombia and Canada (both 3 out of 6 applications).

140. Globally, 8% of reasons for refusal were based on the applicant having no rights of custody. The State that refused the highest proportion of applications for this reason was Costa Rica, 50% (1 out of 2 reasons for refusal) followed by Portugal and Ukraine (both 40%, 2 out of 5 reasons).

141. 7% of the reasons for refusal globally were based on the fact that applicant was found not to be exercising rights of custody. In Panama this proportion was 36% (4 out of 11 reasons) and in Bulgaria 21% (3 out of 14 reasons). Globally, 5% of refusals were based on the consent of the applicant compared with 50% of the applications refused by Denmark (1 out of 2 reasons) and 33% in New Zealand (1 out of 3 reasons). Acquiescence also made up 5% of the reasons for refusal globally. In New Zealand and Greece this made up 33% of all reasons for refusal (1 out of 3 reasons) and in Australia 28% (5 out of 18 reasons).

5. APPEALS

142. In 2008, 206 applications were decided on appeal, amounting to 11% of the total number of applications considered and 24% of the 857 applications that were decided in court. Additionally, at least 26 applications recorded as 'pending' were awaiting a final appeal hearing at the cut-off date of 30 June 2010.⁵³

143. Of the 206 appealed applications, the final decision in 104 was for return (50%) comprising 14 judicial returns by consent order (7%), 88 judicial returns without consent (43%) and 2 returns where the consent of the parties was unknown (1%). 96 appealed applications ended in a refusal (47%). The remaining 5 applications ended in some other court sanctioned agreement, including 1 agreement that the application should be withdrawn.

144. The first instance decisions for appealed applications were recorded in 180 applications. 102 judicial returns were appealed and 78 judicial refusals. 144 of these appealed applications (80%) ended in the same outcome. Of the 102 first instance judicial returns, 80 ended in a judicial return on appeal, 19 in a judicial refusal and 3 in other outcomes. Of the 78 first instance refusals, 64 ended in a refusal on appeal and 14 in a judicial return.

⁵² Argentina, Ireland and Switzerland also based 100% of their refusal applications on the child not being habitually resident in the requesting State but each only refused one application in total.

⁵³ Not all Central Authorities supplied information about pending applications.

6. TIMING

145. Timing is a key issue when considering the successful operation of the Convention. By Article 1 *a*) the object of the Convention is to secure the prompt return of children wrongfully removed to or retained in another Contracting State, while Article 2 enjoins States to use “the most expeditious procedures available” to attain the Convention’s objectives. Further, by providing that an applicant has the right to request a statement of the reasons for the delay in applications where the judicial or administrative authority has not reached a decision within 6 weeks from the date of commencement of the proceedings, Article 11(2) of the Convention implies that there is a 6 week period in which applications should be resolved. This, however, is not a Convention *obligation* but for Member States of the European Union (except Denmark) as from 1 March 2005 there has been an attempt to impose a six week obligation by Article 11(3) of the Council Regulation (EC) No 2201/2203 of 27 November 2003,⁵⁴ (the ‘Brussels II a Regulation’).

146. As in previous surveys, the following section compares the time taken to resolve voluntary returns as well as judicial returns and refusals. We have omitted rejections, withdrawals, pending applications and other outcomes from this analysis for a variety of reasons. We have no information regarding timings in relation to rejected applications; withdrawn applications cover a wide variety of possible reasons for withdrawal and so timing is only relevant in some applications; and our information regarding outcomes categorised as ‘other’ is imperfect.

147. In addition to this, we are now able to provide some information on how long the application was held by the Central Authority before it was sent to court and, subsequently, the time taken for the court to reach a final decision on the case. This was a new question in the 2008 survey and provides information about timings at all stages of the application process.

148. In the 2008 and 2003 surveys, judicial returns were divided into those made with consent and those made without and this leads to some interesting analysis (see below). For the most part, however, the two are considered as a ‘combined’ outcome so as to be comparable with the 1999 analysis and to be inclusive of those applications in which it was not known whether the decision was made by consent order or without consent.

6.1 The time between application and outcome

149. The mean number of days to arrive at a final settlement was 188 days, but this figure varied considerably depending on the outcome which was reached as can be seen from the table below.⁵⁵ The table below shows the mean average time taken from the receipt of the application by the Central Authority until the final agreement or court decision.⁵⁶ They therefore include those applications where orders have been made on appeal.⁵⁷

⁵⁴ More information on the Brussels IIa Regulation can be found in the Regional Trends Analysis below. The full text of the Regulation can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:HTML>.

⁵⁵ Italy and England and Wales excluded from the table below as they were unable to identify whether the judicial return was made with or without consent.

⁵⁶ The figures are based on 186 voluntary returns, 115 judicial returns by consent, 263 judicial returns without consent and 273 judicial refusals.

⁵⁷ For further analysis of the timing of appealed and un-appealed judicial decisions, see para 6.4 below.

The average number of days taken to reach certain outcomes in 2008

	Voluntary return	Judicial return by consent	Judicial return not by consent	Judicial refusal
Mean	121	163	204	286
Median	63	114	154	248
Minimum	0	5	2	19
Maximum	700	627	765	880

150. Voluntary returns were resolved most quickly with an average of 121 days taken to reach a final decision. By contrast, judicial refusals took the longest at an average of 286 days until a final decision was reached. It is important to note that these average timings exclude the 154 applications that were still pending at the cut off date of 30 June 2010 and so would have been even longer had they been included.

151. Of the applications that went to court, the average time to reach a final decision was 206 days but 168 days if only the first instance decisions were considered.⁵⁸

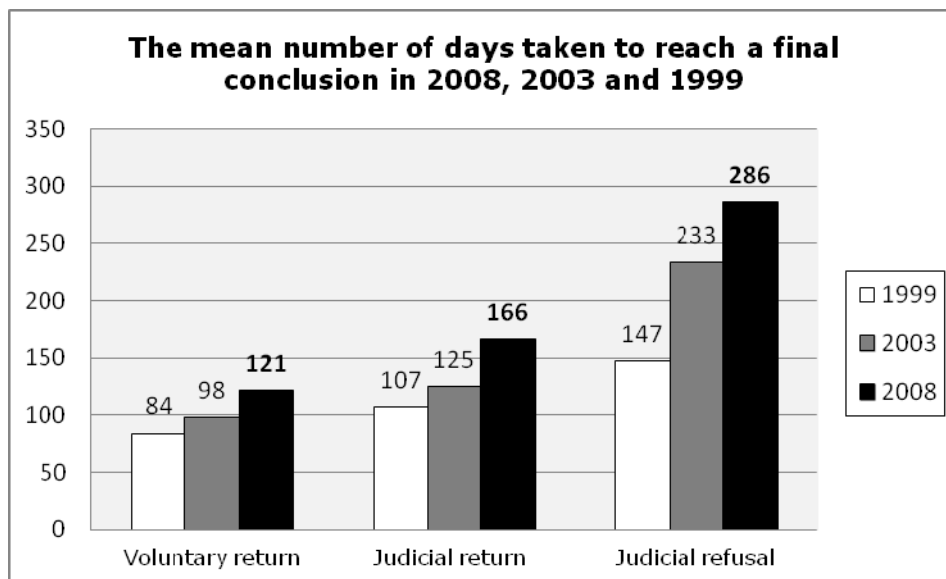
152. The averages in the table below show a large increase in the time taken to reach a decision compared with 2003. All outcomes took longer to conclude.

The time taken to reach certain outcomes in 2008 and 2003

	2003	2008
Voluntary return	98	121
Judicial return by consent	85	163
Judicial return not by consent	143	204
Judicial refusal	233	286

153. By combining all types of judicial return we can compare these timings with both previous surveys. From the graph below it is clear that decisions are taking longer to conclude and have increased gradually in each survey since 1999. The figures are striking: in particular the time taken to conclude a judicial refusal which has nearly doubled since 1999.

⁵⁸ This figure includes the first instance decisions of applications that were subsequently appealed.



154. Considering the time taken purely in terms of the mean number of days can be quite deceptive as it is inevitable that some applications will take considerably longer due to their complexity. Consequently we have also considered the median average speed as well as the maximum and minimum number of days to reach each outcome.

The average number of days taken to reach certain outcomes in 2008, 2003 and 1999

	Voluntary return			Judicial return			Judicial refusal		
	1999	2003	2008	1999	2003	2008	1999	2003	2008
Mean	84	98	121	107	125	166	147	233	286
Median	44	58	63	73	88	114	135	195	248
Minimum	0	0	0	1	0	2	5	0	19
Maximum	431	543	700	718	825	765	606	700	880
<i>Number of applications where dates were available</i>	139	140	186	280	340	480	88	150	273

155. The table above shows that some applications were resolved quickly but others extremely slowly. It is striking that, in 2008, the maximum length of time to reach a result was 700 days or more for each outcome. It should also be remembered that 154 applications were still pending on 30 June 2010.

156. In 2008 and 2003, information regarding the time taken to reach a decision of access in return applications was available. In 2008, 62 applications ended in access being agreed or ordered and the dates were available in 47 of these applications. The time taken to reach such an outcome was 154 days. This is quicker than the 2003 average of 188 days looking at 30 applications ending in access.

157. There were, of course, significant differences found between Contracting States. As can be seen in the table below, on average, Denmark resolved applications the quickest with an average of 44 days to conclude an application compared with Bulgaria which took 347 days.⁵⁹

⁵⁹ In this comparison we have excluded Georgia and Paraguay as they only received 1 application each.

158. The table also shows the number of applications pending in each State. This is significant as the timing for these pending cases was not included in the calculations for the average time taken. Had they been included the average times would have been longer and so it may be misleading just to look at these averages in assessing the speed at which a State concluded its applications. For example, as mentioned above, Bulgaria took an average of 347 days to conclude 17 of the applications it received but no applications were pending, this is in contrast with Portugal which resolved a similar number of applications (19) in only 133 days but an additional 5 applications were pending as of 30 June 2010.

159. An additional 6 States are not included in the table below as no dates were available for any of the applications they received (China – Hong Kong, Croatia, Guatemala, Montenegro, Slovenia and UK-Bermuda). 4 applications were recorded as pending in these States (1 in China – Hong Kong, 2 in Guatemala and 1 in Montenegro).

The average number of days taken to reach a final decision by the Contracting State which received the application

Contracting State child taken to	Mean number of days taken to reach a final outcome	Number of applications where dates available	Number of applications pending
Denmark	44	6	2
Iceland	73	2	0
Finland	75	7	0
Sweden	83	4	2*
New Zealand	84	32	0
UK - England & Wales	88	198	1*
Dominican Republic	91	5	0
Latvia	97	8	0
Serbia	105	1	2
Uruguay	112	3	1
UK - Northern Ireland	120	7	0
Italy	123	20	0*
Portugal	133	19	5
Australia	140	70	0
Honduras	141	2	0
Canada	145	33	2
Chile	146	10	0
Norway	146	6	0
Cyprus	149	3	1
Hungary	162	7	0
Austria	162	23	1
Germany	163	54	9
Israel	167	7	2
Estonia	181	5	0
Czech Republic	187	9	0
Ireland	187	23	2
Poland	195	48	2
Netherlands	210	22	1
UK - Scotland	208	4	0*
Belgium	223	29	0
Argentina	225	8	8
Luxembourg	226	2	0
USA	227	122	34
Costa Rica	242	2	0
Greece	252	5	6
Mexico	252	100	34
South Africa	260	8	2*
Spain	265	29	1*
Romania	268	41	6
France	278	30	3*
Ecuador	286	8	1
Switzerland	301	8	3
Turkey	314	24	7

Brazil	320	4	6
Colombia	321	25	2*
Panama	321	7	0
Lithuania	322	3	0
Ukraine	327	15	4
Bulgaria	347	17	0
Georgia	436	1	0
Paraguay	646	1	0*
Total	188	1127	150

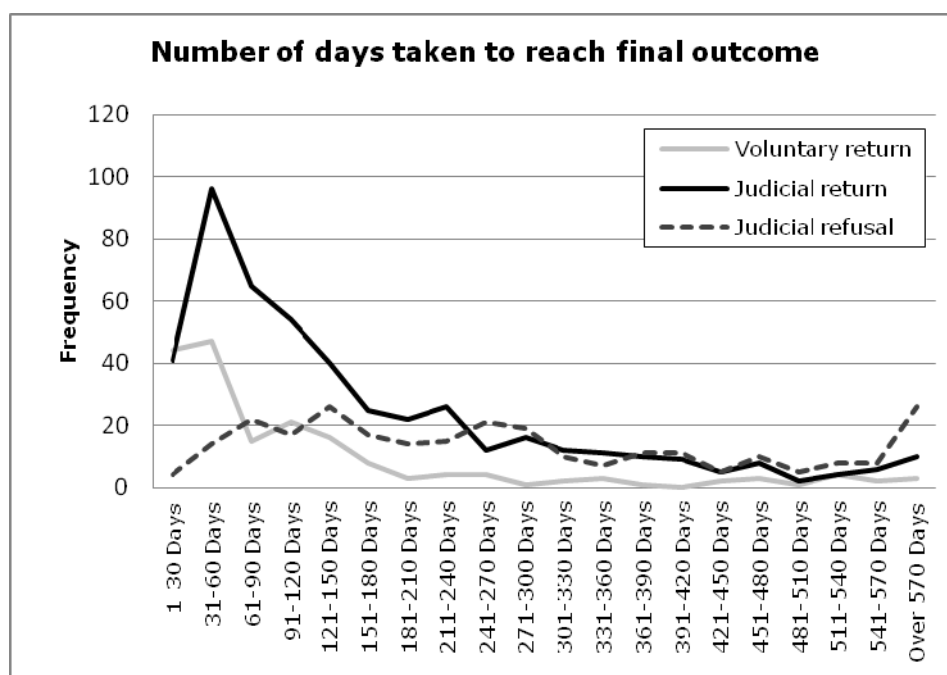
* The numbers marked with an asterisk indicate that outcomes were not known for all applications received by that State and so there may have been more applications pending.

6.2 Timing and outcomes in return applications

160. The graph below shows the number of applications falling into each time band and is organised according to the final outcome of the application.

161. The graph backs up the findings of previous surveys as, with the exception of applications ending in a refusal, the number of applications in a single category peaked in the earlier time bands and then began to flatten out.

162. The timings for refused applications are also similar to previous surveys as there is no definite peak but rather a series of peaks and troughs.



163. Looking at the outcomes shown in the graph above,⁶⁰ 199 applications took over 300 days to resolve. This can be compared with 2003 where 77 applications took this long and 1999 where the figure was only 26. It must be remembered that there was a vast increase in the number of applications in 2008 and so there were likely to be more that exceeded 300 days. The table below organises the applications which took over 300

⁶⁰ This calculation only includes voluntary returns, judicial returns and judicial refusals thereby excluding from analysis orders for access, withdrawn applications and 'other' outcomes.

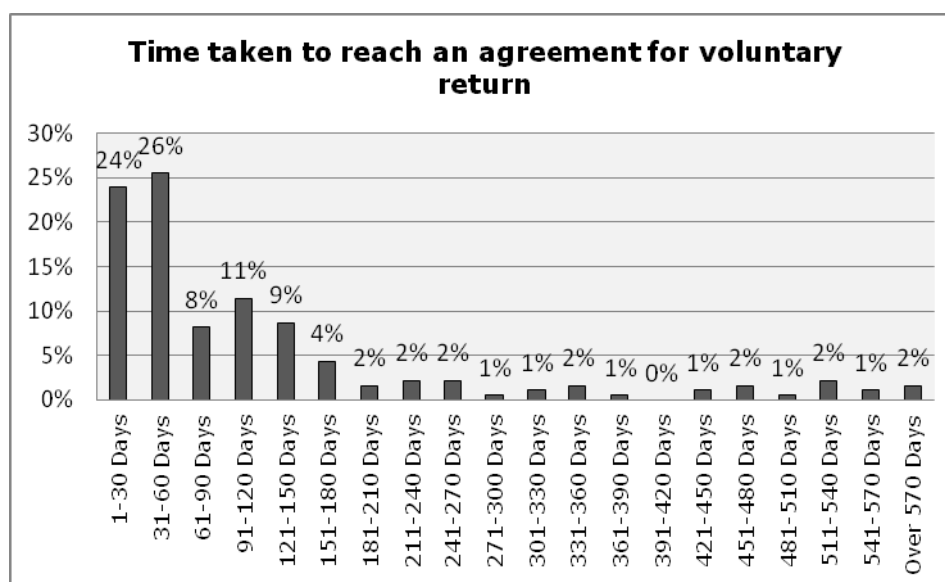
days according to the outcome which was reached and shows the proportion this amounted to of all applications resulting in that outcome.⁶¹

The number of applications taking over 300 days to resolve and final outcomes

	1999		2003		2008	
	Frequency	Proportion	Frequency	Proportion	Frequency	Proportion
Voluntary return	8	6%	7	5%	21	11%
Judicial return	12	4%	25	7%	77	16%
Judicial refusal	6	7%	45	30%	101	37%
Total	26	5%	77	12%	199	21%

164. The proportion of applications taking over 300 days in 2008 is much greater for all outcomes compared with both 2003 and 1999.

6.2.a Timing and voluntary returns

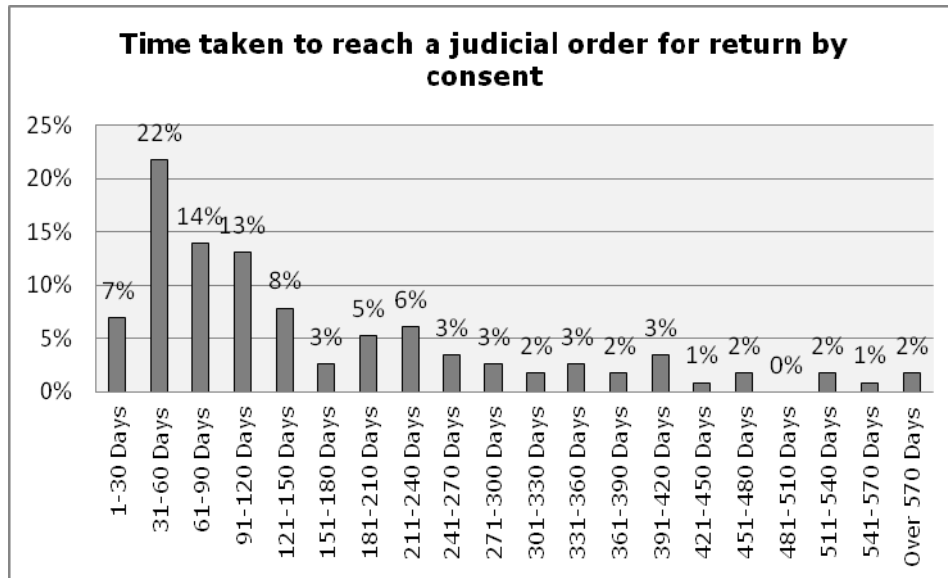


165. Of all outcomes, voluntary returns were, on average, resolved the most quickly with 58% being concluded in fewer than 91 days. This is consistent with the 2003 figure of 60% but slower than in 1999 where 67% of voluntary return applications were resolved in this time. This slowing down of applications is starker if the proportion of applications resolved in fewer than 31 days is considered. In 2008, 24% were resolved in fewer than 31 days compared with 34% in 2003 and 42% in 1999.

⁶¹ This only includes applications in which dates were available and so timings could be calculated.

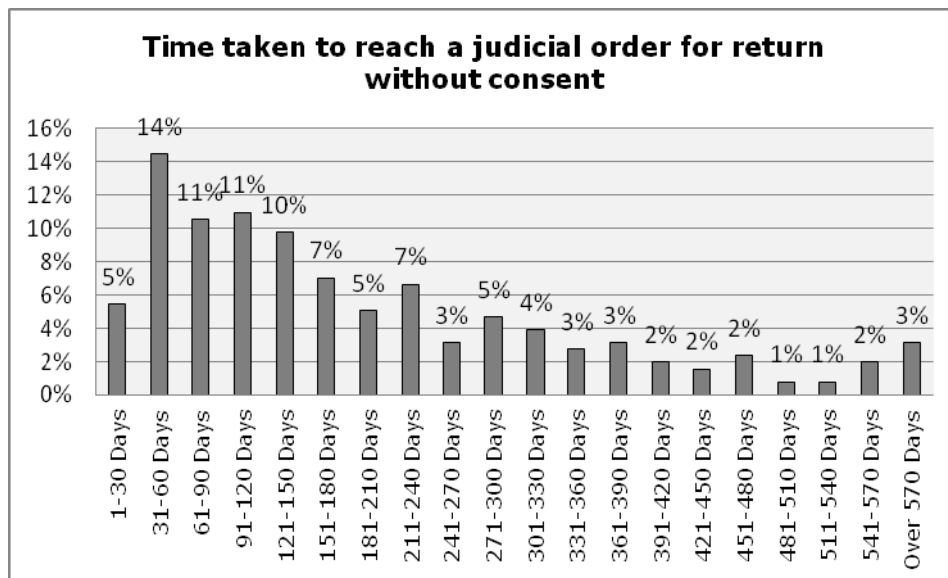
6.2.b Timing and judicial returns

Judicial returns by consent order



166. Like applications ending in a voluntary return, judicial returns with consent also peak at 31-60 days. In 2008, 43% of applications resulting in a judicial return by consent were concluded in fewer than 91 days compared with 69% in 2003. Only 7% were concluded in fewer than 31 days, compared with 23% in 2003.

Judicial returns without consent

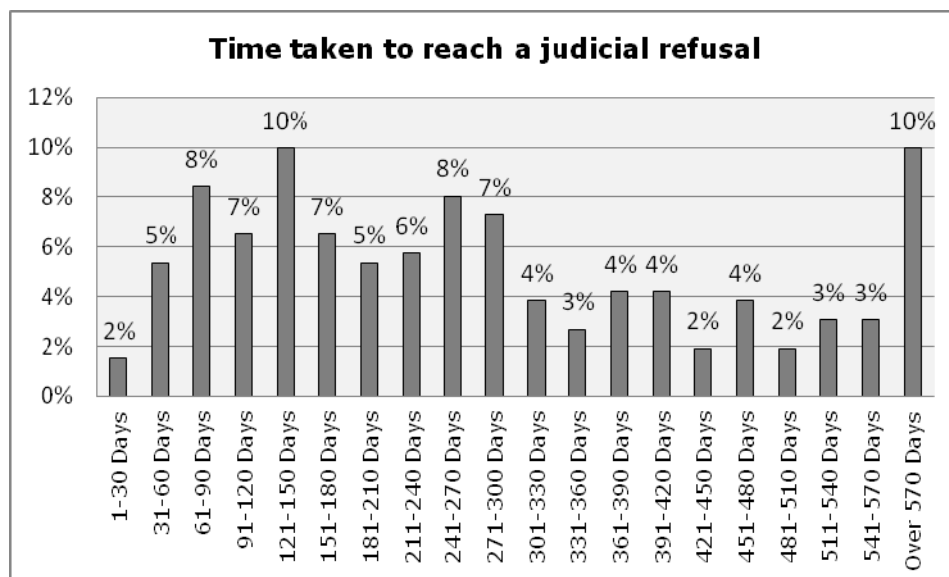


167. As in previous surveys a high proportion of judicial orders for return without consent were resolved in 31-60 days but the graph does not flatten out in the same way as that of voluntary returns and judicial returns by consent as there are still a large number of applications decided over a longer period. Judicial returns without consent were resolved more slowly than judicial returns by consent and fewer were resolved in the 90 day and 30 day periods. In 2008, 30% of judicial returns without consent were

ordered in less than 91 days and 5% in less than 31 days. This can be compared with 42% and 12%, respectively, in 2003.

168. Combining judicial returns with and without consent allows for a comparison with the 1999 data which recorded only one overall category of judicial return. In 2008, 43% of judicial returns were ordered in fewer than 91 days compared with 51% in 2003 and 59% in 1999.

6.2.c Timing and judicial refusals



169. As in previous surveys, the disposal of judicial refusals tend to peak and trough over time with a considerable number of applications taking a long time to conclude. The 2008 statistics are striking as 10% of applications took over 570 days compared with only 2% in 2003. As in previous surveys, few judicial refusals were concluded in less than 31 days (4 applications in 2008, 3 in 2003 and 4 in 1999). In 2008, 15% were concluded in less than 91 days compared with 21% in 2003. In 1999, 80% of judicial refusals took between 31-210 days compared with 52% in 2003 and 41% in 2008.

6.3 The time taken by the Central Authorities for the application to be sent to court and for the court to dispose of the case

170. For the first time, the 2008 survey recorded the dates at which the applications were sent to court. On average the Central Authorities in the requested State took 76 days to send an application to court and the courts took 153 days to reach a final decision from the date it arrived with them.⁶²

171. The table below shows the average time taken to conclude an application from the date it was made compared with the time taken for each Central Authority to send an application to court and for the courts of the requested State to then dispose of the application. The dates when the applications were sent to court were not available for

⁶² Not all States were able to provide dates for when the applications were sent to court. These figures are based on 800 applications for which the date sent to court was available and 587 applications where the date of the final settlement was also available to calculate the time taken to conclude the application. The number of days taken do not add up to the overall average as in some applications the time taken to send the application to court was available but not the date at which the application was concluded (for example, if the application was still pending or the date of the final decision was missing).

applications received by Colombia, Costa Rica, Denmark, Iceland, Italy, Lithuania, Spain and Sweden.

Time taken to send an application to court and for the court to dispose of it and the State which received the application

Contracting State child taken to	Number of days before sent to court		Number of days with the court	
	Mean	Number of applications	Mean	Number of applications
Argentina	77	12	198	7
Australia	35	53	128	49
Austria	3	24	171	21
Belgium	98	26	141	23
Brazil	225	5	*	*
Bulgaria	161	14	257	14
Canada	54	22	69	21
Chile	30	5	131	5
Cyprus	42	1	241	1
Czech Republic	221	3	156	3
Dominican Republic	78	1	7	1
Ecuador	116	3	526	2
Estonia	31	5	150	5
Finland	38	7	37	7
France	119	25	191	24
Georgia	49	1	N/A	N/A
Germany	72	55	89	51
Greece	135	7	231	4
Honduras	90	2	210	1
Hungary	39	3	102	3
Ireland	66	11	149	6
Israel	28	4	135	5
Latvia	16	8	89	6
Luxembourg	128	1	205	1
Mexico	47	140	211	64
Netherlands	123	20	108	18
New Zealand	12	31	81	25
Norway	14	9	132	6
Panama	7	8	285	4
Paraguay	43	1	N/A	N/A
Poland	15	61	206	44
Portugal	24	24	152	7
Romania	98	38	230	30
Serbia	92	9	N/A	N/A
South Africa	270	3	45	3
Switzerland	56	7	201	6
Turkey	126	30	224	24
Ukraine	250	12	414	6
UK- England and Wales	14	18	48	18
UK - Scotland	69	2	250	2
UK - Northern Ireland	50	9	23	5
USA	207	73	106	62
Uruguay	2	7	110	3
Total	76	800	153	587

* = no dates were available for the applications sent to court.
N/A= no applications were sent to court.

6.4 Timing and appeals⁶³

172. Where a case has been decided on appeal it is likely to have taken longer to conclude due to both the time taken for more than one court hearing and the potential for complexity in the case. These decisions may skew the overall average time taken to reach a final settlement.

173. The average time taken to reach a first instance decision from the date the application was made was 168 days. This includes the first instance decisions of applications that were subsequently appealed.

174. The table below shows the number of days taken for each outcome to be decided on appeal from the time the application was received by the Central Authority to the time it was concluded.⁶⁴ As with the overall averages, judicial refusals took the longest to conclude.

The average time taken to conclude a return application decided on appeal

	Judicial return by consent	Judicial return not by consent	Judicial refusal
Mean	280	281	369
Median	267	257	332
Minimum	66	13	86
Maximum	553	765	880

175. Where an application was decided on appeal it took an average of 324 days to conclude from the date the application was made. The average time between the date it arrived at court and the date when it was concluded was 250 days⁶⁵ compared with the global average of all applications of 153 days from the date it arrived at court.

176. The time taken for the Central Authority to send an application to court that was ultimately decided on appeal was also longer at 95 days compared with 76 days when all applications were considered. It took an average of 141 days from the date of the first instance decision to conclude an appeal.⁶⁶

⁶³ The applications received by Ireland and Italy have been excluded from this analysis as the Central Authorities were unable to provide information on whether a case had been appealed.

⁶⁴ These calculations are based on 14 judicial returns by consent, 85 judicial returns without consent and 94 judicial refusals.

⁶⁵ This figure is based on 177 appealed applications where dates were available.

⁶⁶ Including some cases in which there was a second appeal.

VII. ACCESS APPLICATIONS

1. The number of access applications

177. In this section we analyse the 360 access applications received by 42 Contracting States in 2008. This can be compared with the 238 applications received by 27 Contracting States in 2003 and the 197 applications received by 25 States in 1999.

178. This is a 51% increase on the total number of applications received in 2003 and an 83% increase on 1999. To calculate an accurate picture of the increase in applications since 2003, the responses of States in 2008 has been compared directly with their responses in 2003, excluding any States that did not respond in that year or that acceded to the Convention after 2003.⁶⁷ Using this method there was a 40% increase in access applications from the 2003 survey.

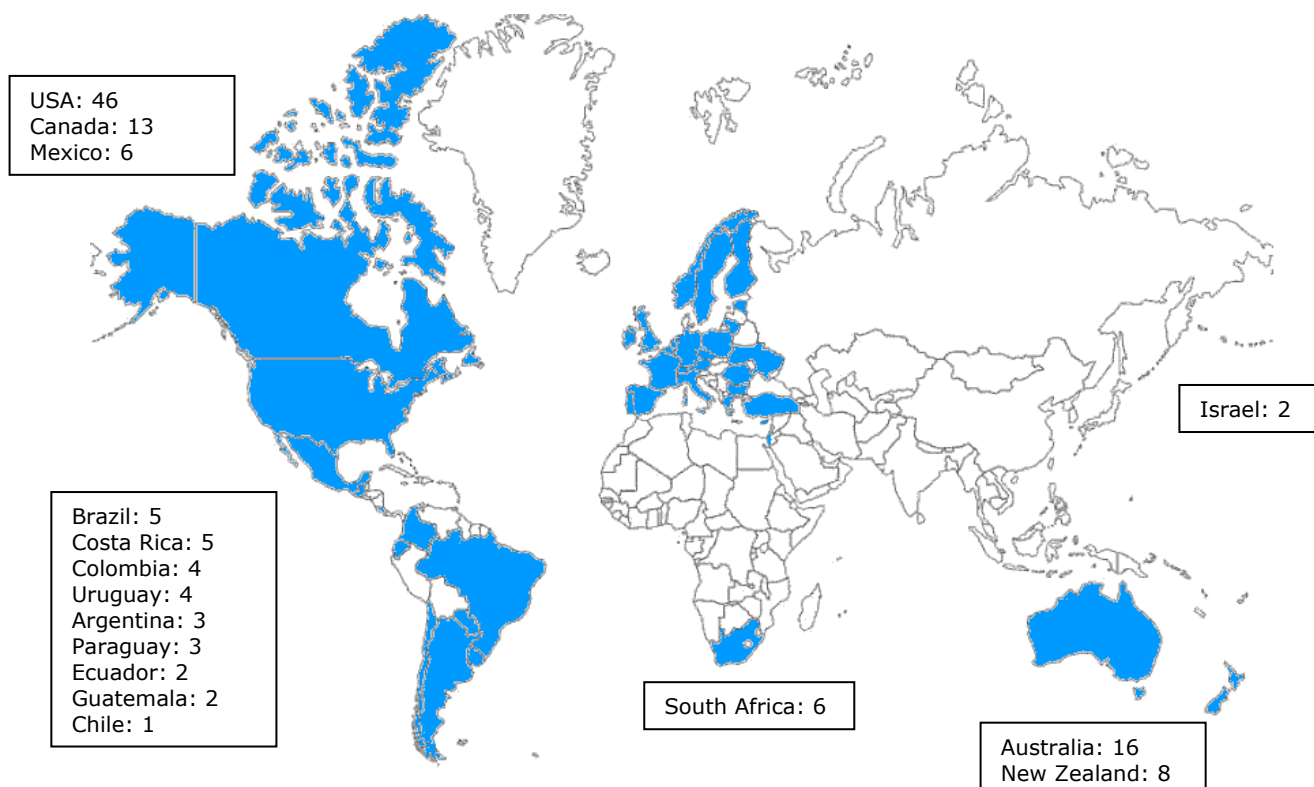
179. The State that received the most access applications in 2008 was the USA, 46 applications. UK - England and Wales received 38 applications, followed by Germany (31), Spain (25) and Italy (23). No access applications were received by the following States:

180. Albania, Armenia, Canada (Provinces and Territories of Manitoba, New Brunswick, Newfoundland and Labrador, North West territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon), China (Hong Kong and Macao), Denmark, Dominican Republic, Georgia, Germany, Honduras, Hungary, Iceland, Latvia, Luxembourg, Monaco, Montenegro, Nicaragua, Panama, Serbia, Slovenia and the UK (Central Authorities in Isle of Man, Falkland Islands, Cayman Islands, Bermuda).

⁶⁷ Only the States which responded to both the 2003 and 2008 surveys have been used. The applications made and received by Ukraine have been excluded from the 2008 survey for these purposes as it became party to the Convention after 2003 and was therefore not included in the 2003 survey.

The number of applications received by each State

UK - England and Wales: 38	Czech Republic: 6	UK-Northern Ireland: 2
Germany: 31	Norway: 4	UK - Scotland: 2
Spain: 25	Estonia: 3	Bulgaria: 1
Italy: 23	Portugal: 3	Cyprus: 1
France: 22	Turkey: 3	Finland: 1
Ireland: 13	Ukraine: 3	Greece: 1
Netherlands: 13	Austria: 2	Lithuania: 1
Sweden: 11	Croatia: 2	Malta: 1
Switzerland: 11	Poland: 2	
Belgium: 7	Romania: 2	



181. As in 2003 and 1999, significantly more access applications were received by the USA (46) than any other State. However, the proportion of overall applications received by the USA has decreased from 22% in 1999 and 25% in 2003 to only 13% in 2008. The Central Authority of England and Wales received 38 applications - the second highest number. This is 11% of all access applications received in 2008 and proportionately similar to the 1999 survey where 13% of access applications were received by England and Wales (25 applications) but higher than in 2003 where applications amounted to 7% of the overall total (17 applications).

182. As in previous surveys, Germany and Spain received a high proportion of applications with 9% (31 applications) and 7% (25 applications) respectively. The fifth highest proportion of applications were received by Italy with 6% (23 applications).

183. The table on the next page shows the increases and decreases in the number of access applications received by each State in 2008, 2003 and 1999.

The number of access applications received by Contracting States in 2008, 2003 and 1999⁶⁸

	2008 access applications	+/- count	% increase /decrease	2003 access applications	+/- count	% increase /decrease	1999 access applications
USA	46	-13	-22%	59	15	34%	44
UK - England and Wales	38	21	124%	17	-8	-32%	25
Germany	31	13	72%	18	-6	-25%	24
Spain	25	6	32%	19	13	217%	6
Italy	23	20	667%	3	-1	-25%	4
France	22	9	69%	13	-2	-13%	15
Australia	16	-3	-16%	19	5	36%	14
Canada	13	2	18%	11	3	38%	8
Ireland	13	11	550%	2	1	100%	1
Netherlands	13	7	117%	6	-2	-25%	8
Sweden	11	6	120%	5	3	150%	2
Switzerland	11	0	0%	11	6	120%	5
New Zealand	8	2	33%	6	2	50%	4
Belgium	7	5	250%	2	2		0
Czech Republic	6	6		0	-3	-100%	3
Mexico	6	6		0	0		0
South Africa	6	3	100%	3			NR
Brazil	5			NR			N/A
Costa Rica	5			NR			NR
Colombia	4			NR			0
Norway	4	4		0	-3	-100%	3
Uruguay	4			NR			N/A
Argentina	3	-3	-50%	6	0	0%	6
Estonia	3	3		0			N/A
Paraguay	3			NR			NR
Portugal	3	0	0%	3	-1	-25%	4
Turkey	3	3		0			N/A
Ukraine	3			N/A			N/A
Austria	2	-9	-82%	11	3	38%	8
Croatia	2	2		0	-1	-100%	1
Ecuador	2			NR			NR
Guatemala	2	2		0			N/A
Israel	2	0	0%	2	0	0%	2
Poland	2	-6	-75%	8			NR
Romania	2	2		0	-1	-100%	1
UK - Northern Ireland	2	2		0	-1	-100%	1
UK - Scotland	2	2		0	-3	-100%	3
Bulgaria	1	1		0			N/A
Chile	1	-3	-75%	4	0	0%	4
Cyprus	1	0	0%	1			N/A
Finland	1	-1	-50%	2	0	0%	2
Greece	1	0	0%	1			NR
Lithuania	1	1		0			N/A
Malta	1	1		0			NR
Total	360	122	51%	238	33	16%	205

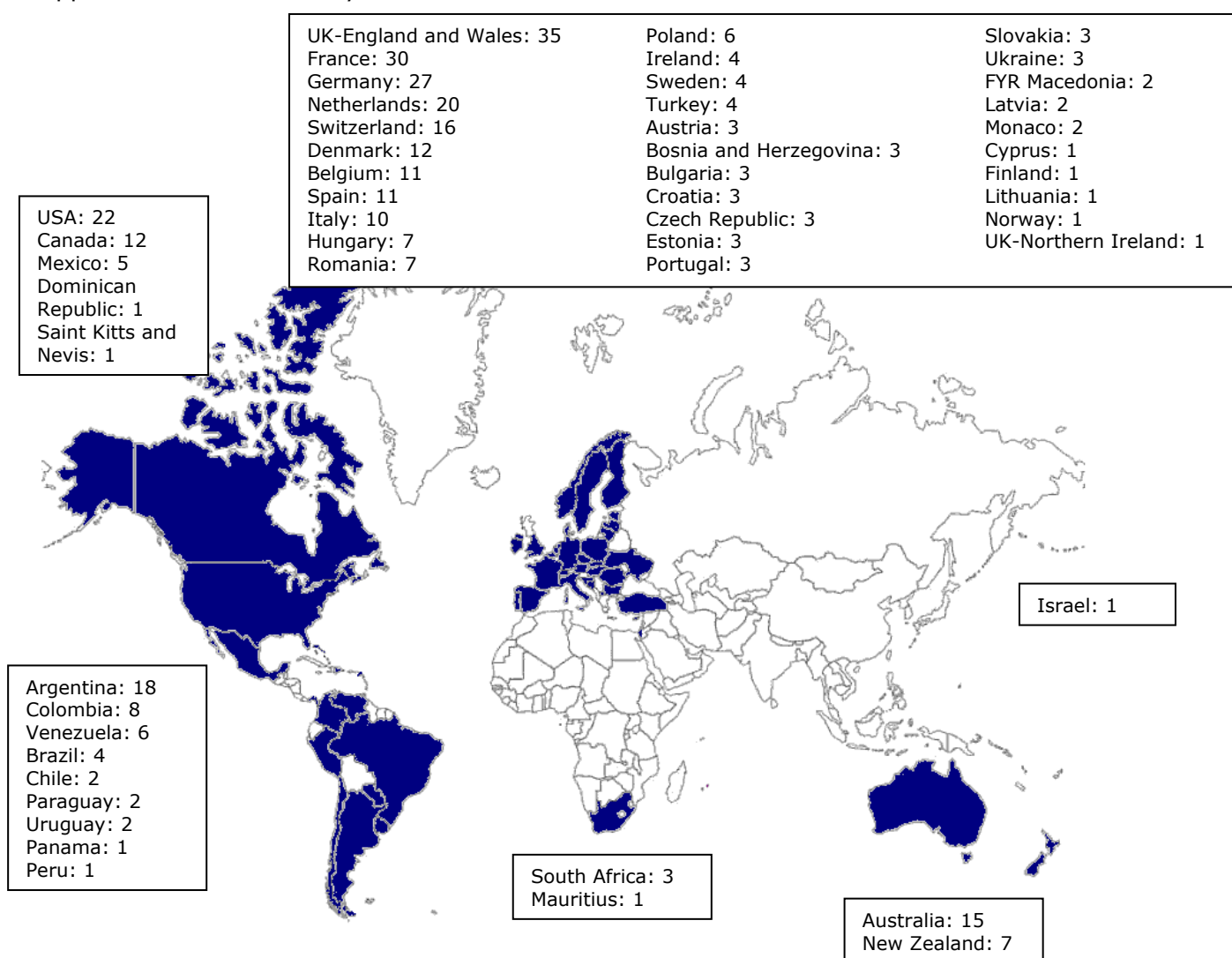
N/A = not applicable because not a Contracting State at the time
NR = no response received in that year

⁶⁸ The 1999 survey analysed 197 incoming access applications received by 25 Contracting States. After the publication of the 1999 report additional information was received on the overall numbers of applications received in that year by Argentina, Croatia, South Africa and Mauritius, amounting to 8 applications in total. No detailed information was received with regard to the content or outcome of these 8 applications.

184. As mentioned previously, there was a 51% increase on the total number of applications received in 2008 compared with the total number received in 2003. The table above compares the increase and decrease in applications received by each State that responded in 2008 with the figures from 2003 and 1999. The greatest increase in the number of access applications received was in England and Wales which received 38 in 2008 compared with 17 in 2003. However, it must be noted that the number of applications received in 2003 was lower than in 1999. Italy also received a much greater number of access applications in 2008, 23 applications, compared with 3 in 2003 and 4 in 1999. This was the greatest proportional increase of any State.

The States that made the applications in 2008⁶⁹

185. The 360 access applications were made by 51 Contracting States. In comparison, in 2003, the 238 access applications were made by 38 Contracting States and one State (Lebanon) that was and is still not party to the Convention. In 1999, the 197 access applications were made by 32 different States.



⁶⁹ Information on the State from which the application came was missing for 6 applications.

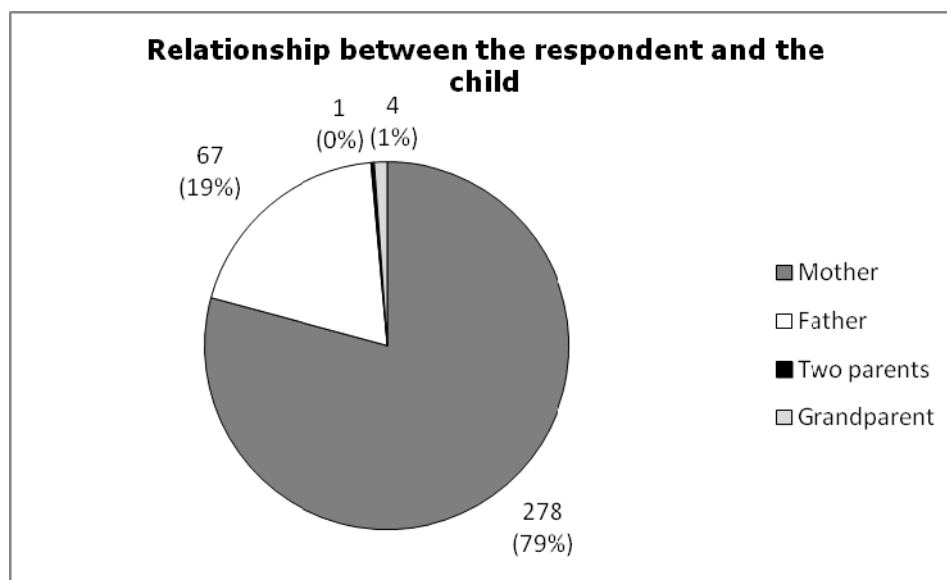
186. In both 2008 and 2003, the Central Authority sending the greatest number of access applications was England and Wales which made 35 (10% of all applications) in 2008 and 36 (15%) in 2003.

187. In comparison with the return applications it sent and received, the USA made relatively few access applications (22 applications compared with 309 return applications). The 2003 report showed similar figures with the USA making only 10 access applications compared with 167 for return.

2. THE RESPONDENT

2.1 The relationship between the respondent and the child⁷⁰

188. 79% of the respondents in access applications in 2008 were mothers. This is the same proportion as in 2003 but a decrease on the 1999 figures where 86% of respondents were female and so, as the vast majority of respondents are parents, presumed to be mothers.



189. The proportion of respondents who were mothers is higher in access applications than in returns where 69% of taking persons were mothers. This was also found to be the case in 2003 and 1999.

190. The proportion of respondent mothers and fathers varied from State to State. In 11 States receiving more than one access application, all the respondents were mothers,⁷¹ including New Zealand which received 8 applications. By contrast, only 33% of respondents in Mexico were mothers (2 applications out of 6), 50% in Norway (2 out of 4), 67% in Paraguay (2 out of 3), 67% in Turkey (2 out of 3) and 69% in Canada (9 out of 13).

⁷⁰ Information on the relationship between the taking person and the child was unavailable in 10 applications.

⁷¹ Argentina, Austria, Czech Republic, Estonia, Israel, New Zealand, Poland, Portugal, Romania, UK - Northern Ireland and Ukraine.

2.2 The status of the respondent as carer to the child

191. As mentioned in the global return analysis, the 2008 survey included a specific question of whether the respondent was the "primary carer" of the child.⁷² This question proved difficult for many Central Authorities and was only completed in respect of 70 access applications. In all of these applications the respondent was the primary carer of the child with 90% (63 respondents) being the sole primary carer and 10% (7 respondents) a joint primary carer.

2.3 The nationality of the respondent

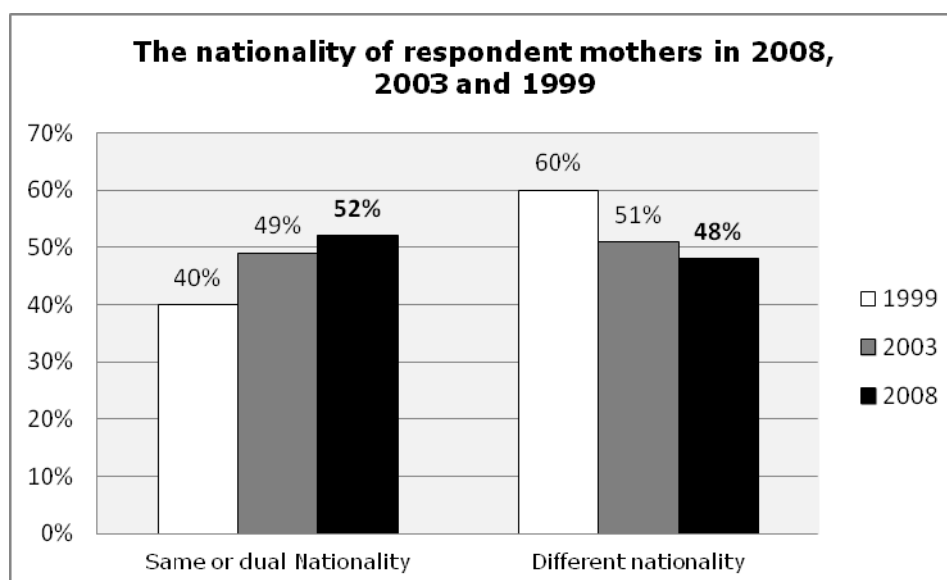
192. The nationality of the respondent was recorded in 240 applications. In 2008, 50% of access applications involved a respondent who was a national of the State to which they had moved with the child.⁷³

193. In 2003, the proportion of respondents having citizenship of the requested State was slightly higher at 53% but, in 1999, it was lower at 40%.

194. The proportion of respondents having the nationality of the requested State varied considerably from State to State. In some States all the respondents were citizens of the requested State: Argentina (3 applications), Estonia (3 applications), Ukraine (3 applications) and Poland (2 applications). By contrast none of the respondents in Mexico (6 applications), Colombia (4 applications) or Austria (2 applications) were nationals of the requested State and 96% of respondents in Spain were not Spanish citizens (24 out of 25 applications).

2.4 The relationship and nationality of the respondent combined⁷⁴

195. In 2008, 52% of mothers had the same nationality of the requested State. This can be compared with 49% in 2003 but only 40% in 1999.

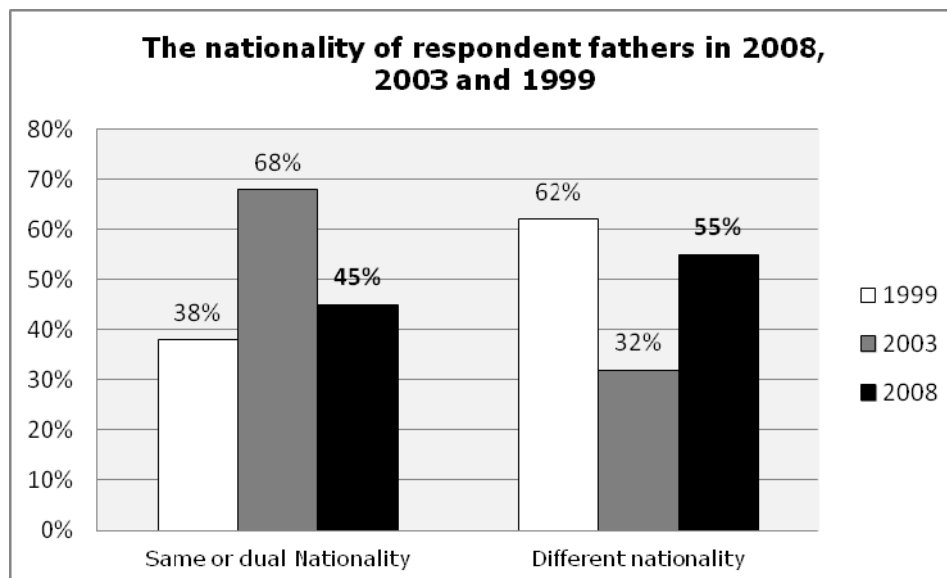


⁷² The term "primary carer" was not defined in the questionnaire and so there is uncertainty in the terminology. The authors take the view that the "primary carer" refers to the parent with whom the child usually lives at the time of removal and the "joint-primary carer" where the child either lived with both parents at the time of removal or, if the parents were separated, spent a substantial amount of time with each parent.

⁷³ 41% were the same nationality of the requested State and 9% had dual nationality, one of which being that of the requested State.

⁷⁴ These figures have been calculated from 182 applications where the taking person was the mother and 48 applications where the taking person was the father.

196. When looking at respondent fathers it is hard to establish whether there is a correlation between the relationship between the respondent and the child and the nationality of the respondent as the proportion of fathers having the same nationality has fluctuated in the three surveys, as is shown in the graph below.



2.5 The relationship between the respondent and the child and the gender of the child

197. Whether the respondent was the mother or the father of the child did not have a significant impact on the gender of the child involved. Where the respondent was the mother 49% of children were female and so 51% male. If the respondent was the father then 51% were female and 49% male.

3. THE CHILDREN

198. 475 children were involved in the 360 access applications received in 2008. This equates to an average of 1.32 children per application which is slightly lower than the previous findings of 1.35 children in 2003 and 1.38 in 1999.

199. Globally, the majority of applications involved single children. 72% of access applications involved only one child compared with 71% in 2003 and 69% in 1999. In some states, all the applications involved single children: Mexico (6 applications), South Africa (6 applications), Norway (4 applications), Argentina (3 applications), Estonia (3 applications), Portugal (3 applications), Ukraine (3 applications), Poland (2 applications) and Romania (2 applications).

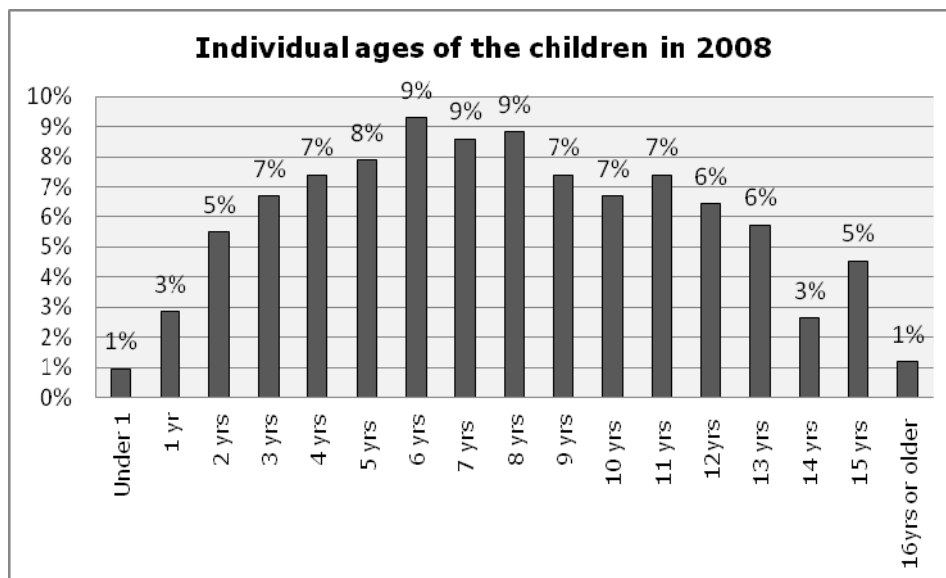
3.1 The age of the children⁷⁵

200. In 2008, the average age of the child involved in an access application was 7.8 years compared with 7.9 years in 2003. If the respondent was the mother then the

⁷⁵ The age of 57 children was not known.

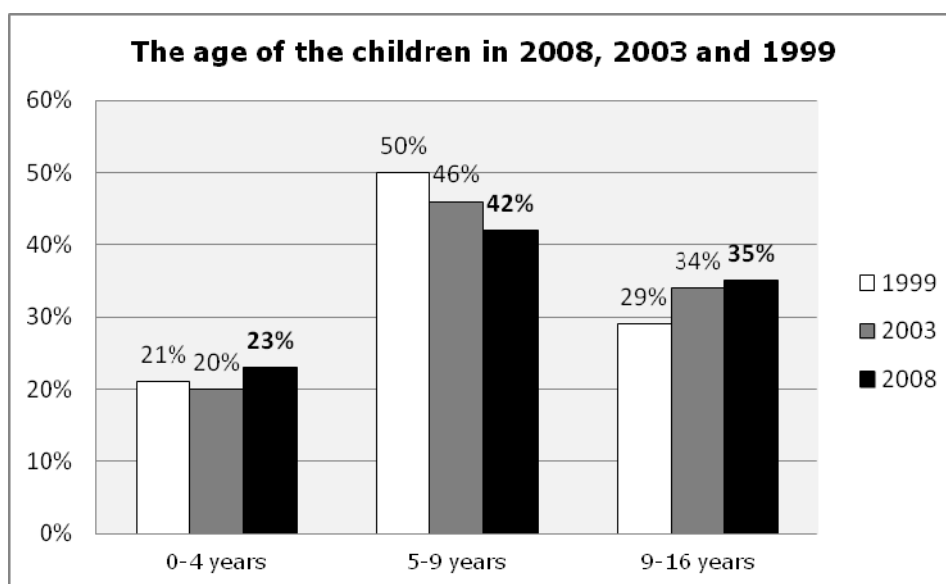
average age was 7.5 years and if the father 9.1 years. The graph below shows the distribution of the individual ages of the children involved in 2008 applications.

201. The average age of the children involved varied from State to State with an average of 13.3 years in Austria and 11.5 years in Malta, to 2.7 years in Estonia and 3.5 years in Romania.



202. The 1999 survey did not collect information about the specific age of the children involved but, rather, asked which age band the children came within. To make a useful comparison, in the graph below, we have arranged the 2003 and 2008 data to fit this format.

203. Although the results have stayed fairly constant over the past three surveys a decreasing number of children fell within the 5-9 year category with more being between 0-4 years and 9-16 years.



3.2 The gender of the children

204. The gender of 440 out of the 475 children was recorded, from which it was found that 49% were female and 51% male. These findings have not changed significantly in the past surveys with 45% female and 55% male in 2003 and exactly 50% female and 50% male in 1999.

4. THE OUTCOMES

205. The outcomes analysed in this report are for all applications received in 2008 regardless of whether an outcome was reached in that year. All applications that were still open at 30 June 2010 have been classed as 'pending'.

206. From our database of outgoing access applications we know of 13 applications which were received by Contracting States other than those analysed in this report. When the outcomes of these applications are added to those highlighted below, the global proportions barely change, consequently, we can be reasonably confident that the figures Stated below are as accurate as they can be for deducing global norms.⁷⁶

4.1 Overall outcomes⁷⁷

Final outcomes of access applications in 2008

	Frequency	Percentage
Rejected	44	13%
Access agreed outside court	27	8%
Access judicially granted	44	13%
Access judicially refused	10	3%
Pending	58	17%
Withdrawn	103	31%
Other	46	14%
Different outcomes for different children	2	1%
More than one outcome	2	1%
Total	336	≈100%

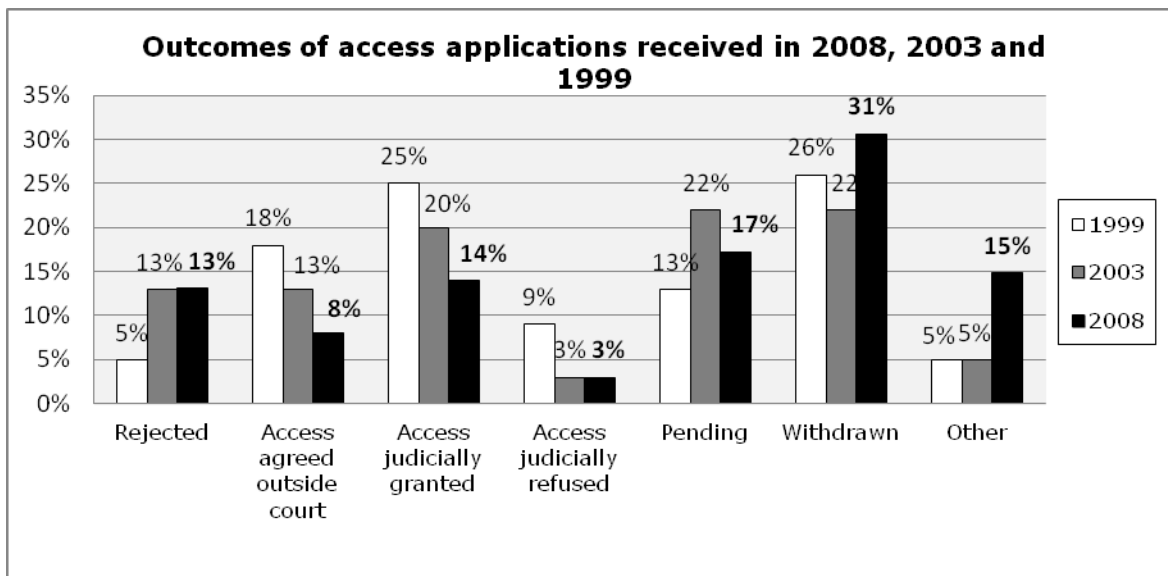
207. The most common outcome for applications, amounting to 31% of all outcomes, was a withdrawal. 44 applications ended with a judicial order for access. Of these 44, 25 were made under the Hague Convention and 18 under domestic law.⁷⁸ The 10 judicial refusals can also be broken down into 7 Hague refusals and 3 under domestic law. The fact that some applications were judicially resolved under the Convention and others under domestic law bears testimony to the different interpretation of Article 21 of the Convention and, in particular, about whether it imposes any obligation upon the court.

208. The overall rate at which access was agreed or ordered was 21% in 2008, comprising 8% access agreements and 13% access orders. This can be compared with 2003 where 13% of outcomes for access were agreed outside court and 20% judicially granted.

⁷⁶ When the extra 13 cases are added the proportions for each outcome remain the same with the exception of rejected applications which rises slightly to 14%.

⁷⁷ The outcome was not known in 22 applications. In an additional 2 applications access was granted pending a court hearing but the final outcome of the application was unknown.

⁷⁸The way in which access was granted in 1 application was not known.



209. The graph above compares the outcomes of access applications in 2008 with those in 2003 and 1999.⁷⁹ The proportion of agreements and judicial orders for access have decreased in each surveyed year, in 2008 the total proportion of applications ending in access was 21% compared with 33% in 2003 and 43% in 1999.

210. This can also be compared with the outcomes in return applications where, in 2008, 46% of applications ended in a return compared with 51% in 2003 and 50% in 1999.

211. The proportion of judicial refusals has decreased from 9% in 1999 to 3% in 2003 and 2008. In 2008 13% of applications were rejected by the Central Authority - the same proportion as in 2003 but higher than the 5% recorded in 1999. The proportion of pending applications was slightly lower in 2008 at 17% compared with 22% in 2003. However, this is still higher than the 13% in 1999. There has been an increase in the number of withdrawn applications (31% in 2008 compared with 22% in 2003 and 26% in 1999) and outcomes described as 'other' (14% in 2008 compared with 5% in 2003 and 1999).

212. The reasons for withdrawal were not given in most applications and, in the few where they were known, they were diverse. 1 application was withdrawn after access had been judicially granted pending a court hearing, it was presumed by the requested Central Authority that this was because the provisional order was working sufficiently and that there was no need to pursue the application any further. 2 applications were withdrawn because the applicant had instructed a lawyer and started separate legal actions in the requested State, 5 because the applicant failed to act on the application and 1 application was withdrawn due to the child's objections.

213. The outcomes of the applications described as 'other' were just as diverse. Where more detailed information was provided, 6 of the applications ended in a voluntary return, 2 in some form of voluntary agreement and 1 in a court settlement (the contents of which were not known). In 3 applications different proceedings had begun, in 4 the whereabouts of the respondent and child were unknown or they had moved to a different State, in 10 the child reached the age of 16 during the proceedings and 7 applications

⁷⁹ For the 2 applications in 2008 and the 5 applications in 2003 described as 'access judicially granted pending court hearing' it is not entirely clear how they would have been recorded in 1999. For the purposes of this comparison they have been excluded.

were closed or ended in other ways due to an inability to contact the applicant or insufficiency of their co-operation.

Applications that went to court

214. Of the 54 applications that went to court,⁸⁰ 44 ended in an order for access (81%) and 19% in a judicial refusal. This can be compared with 2003 where 87% of judicial decisions granted access and 13% refused and 1999 where the proportions were 74% and 26% respectively.

4.2 The outcomes by the Contracting States which received the application

	Rejection	Access agreed outside court	Access judicially granted	Access judicially refused	Pending	Withdrawn	Other	Different outcomes for different children	More than one outcome	Total
Argentina					1	2				3
Australia	6	3	3			4				16
Austria				1			1			2
Belgium	1	1	1		2		1	1		7
Brazil	3	2								5
Bulgaria		1								1
Canada	1	2	3		1	5				12*
Chile				1						1
Colombia	1				1		1		1	4
Costa Rica	1				1		2			4*
Croatia				1				1		2
Cyprus						1				1
Czech Republic		1	1		1	3				6
Ecuador							2			2
Estonia		1			1		1			3
Finland						1				1
France	2	1	1		7	3	7		1	22
Germany	3		1		13	6	8			31
Greece					1					1
Guatemala	1									1*
Ireland		1	3		4	3	2			13
Israel					2					2
Italy		1	4			5	1			11*
Lithuania							1			1
Malta				1						1
Mexico			1	1	2	1	1			6
Netherlands	3		2		2	4	2			13
New Zealand	1		7							8
Norway			1		1	2				4
Paraguay			2				1			3
Poland			1			1				2
Portugal				1	2					3
Romania	1		1							2
South Africa			1		1	4				6
Spain	16		2			4	2			24*
Sweden					3					3*

⁸⁰ These figures are calculated by looking only at the applications which ended with a judicial order for access by consent, access without consent or refusal.

Switzerland	1	3	2		1	2	2			11
Turkey					1	1	1			3
Ukraine			1	1	1					3
UK- England and Wales	2	4	3	1	5	22	1			38
UK - Scotland					1		1			2
UK - Northern Ireland				1			1			2
USA	1	6	2		2	28	7			46
Uruguay			1	1	1	1				4
Total	44	27	44	10	58	103	46	2	2	336

*Totals marked with an asterisk indicate that the number does not represent all applications received by that State as the outcomes for some applications are missing. Overall information on the outcomes of 24 applications was missing.

215. The table above allows us to compare the outcomes of applications received by each State against the global norm. However, as the numbers involved are low, the overall proportions of outcomes in each State can easily deviate from the global norm.

216. The proportion of applications rejected by Central Authorities globally is 13%. Spain, Brazil and Australia rejected a high proportion of applications; 67% (16 out of 24 applications), 60% (3 out of 5 applications) and 38% (6 out of 16 applications) respectively.⁸¹ By contrast, some Central Authorities did not reject any applications.⁸²

217. The rate at which access was agreed or ordered also varied considerably from State to State. Globally, the rate at which access was either agreed or ordered was 21%. In New Zealand 88% (7 out of 8 applications) ended in this way. By contrast, in many States access was neither ordered nor agreed in any applications.⁸³

218. Few access applications were refused in 2008, only 10 applications amounting to 3%. No State refused more than one application.⁸⁴

219. 17% of applications were pending at the cut off date of 30 June 2010. In Greece, Israel and Sweden, all applications were still pending (1, 2 and 3 applications respectively) and in Germany 42% (13 out of 31 applications) remained unresolved.

220. Globally, 31% of applications were withdrawn. In South Africa and Argentina this was 67% (4 out of 6 applications and 2 out of 3 applications, respectively), in the USA 61% (28 out of 46 applications) and in England and Wales 58% (22 out of 38 applications). Cyprus and Finland received only 1 application and both were withdrawn.

4.3 Was the application decided under the Hague Convention or under domestic law?

221. The table below shows the applications where access was either ordered or refused in court and information was available as to whether the case was decided under domestic law or as a Hague application.⁸⁵

⁸¹ Additionally, the 1 application received by Guatemala was rejected.

⁸² Argentina, Austria, Bulgaria, Chile, Croatia, Cyprus, Czech Republic, Ecuador, Estonia, Finland, Greece, Ireland, Israel, Italy, Lithuania, Malta, Mexico, Norway, Paraguay, Poland, Portugal, South Africa, Sweden, Turkey, UK (Scotland and Northern Ireland), Ukraine and Uruguay.

⁸³ Argentina, Austria, Chile, Colombia, Costa Rica, Croatia, Cyprus, Ecuador, Finland, Greece, Guatemala, Israel, Lithuania, Malta, Portugal, Sweden, Turkey and UK (Scotland and Northern Ireland).

⁸⁴ The 10 States that did refuse applications were: Austria, Chile, Costa Rica, Malta, Mexico, Portugal, Ukraine, UK (England and Wales and Northern Ireland) and Uruguay.

⁸⁵ This information was not available for Germany and Italy.

222. In some States, applications were only decided under domestic law, namely: Canada, Croatia, Czech Republic, France, Mexico, New Zealand, Norway, UK – England and Wales and Ukraine. Conversely, all applications were resolved as Hague applications in Australia, Belgium, Chile, Netherlands, Paraguay, Poland, Romania, South Africa and Uruguay.

The way in which an application was decided by each Contracting State⁸⁶

	Access judicially granted - as Hague application	Access judicially granted - under domestic law	Access judicially refused - as Hague	Access judicially refused - under domestic law	Total
Australia	3				3
Austria			1		1
Belgium	1				1
Canada		3			3
Chile			1		1
Croatia				1	1
Czech Republic		1			1
France		1			1
Ireland	1	2			3
Malta			1		1
Mexico		1		1	2
Netherlands	2				2
New Zealand		7			7
Norway		1			1
Paraguay	2				2
Poland	1				1
Portugal			1		1
Romania	1				1
South Africa	1				1
Spain	1	1			2
Switzerland	1	1			2
Ukraine				1	1
UK - England and Wales		3	1		4
UK - Northern Ireland			1		1
USA	2				2
Uruguay	1		1		2
Total	17	21	7	3	48

4.4 The reasons for rejection

223. In 2008, 13% of all applications received were rejected by the Central Authority of the requested State (44 applications). A further two applications were rejected and recorded as having more than one outcome⁸⁷ making a total of 46 rejected applications. The table below shows the reasons for these rejections.

⁸⁶ Information on the way in which the application was decided was missing for 6 applications in which access was granted. 4 applications received by Italy, 1 by Germany and 1 by the Ukraine.

⁸⁷ One application received by France was recorded as being both rejected and withdrawn and one received by Colombia which was rejected but also ended with an agreement for access.

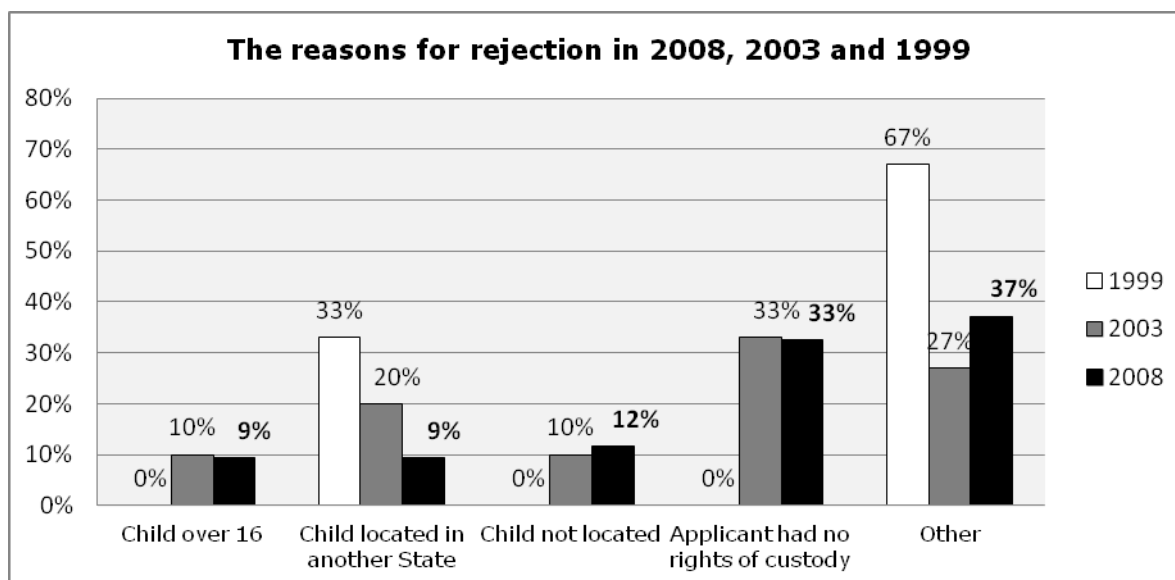
The reasons for rejection in 2008⁸⁸

	Frequency	Percentage
Child over 16	4	9%
Child located in another State	4	9%
Child not located	5	12%
Applicant had no rights of custody	14	33%
Other	16	37%
Total	43	100%

224. The most common reasons for rejection were reasons described as 'other' followed by a finding that the applicant had no rights of custody.

225. The 'other' category covered many different situations. Two applications were rejected on account of having 'no urgency' and two because the 'applicant's rights had not been breached'. Other reasons included: a finding that the child was not habitually resident in the requesting State; that other proceedings were taking place under the domestic law of the requested State; that the applicant was not the father of the child; that the applicant already had an access agreement; or that the child was already back in the requesting State.

226. The proportion of rejected applications increased from 5% in 1999 to 13% in both 2003 and 2008. Only 9 applications were rejected in 1999 compared with 30 in 2003 and 46 in 2008. The graph below compares the reasons for rejection given in 2008 with those in 2003 and 1999.



227. In all three surveys a large proportion of applications were rejected for reasons described as 'other': 16 applications in 2008, 8 in 2003 and 6 in 1999. In both 2008 and 2003 the most common single reason for rejection was that the applicant was found to have no rights of custody. The proportion of applications which are rejected due to the child being over 16 or located in another State have decreased each year but the

⁸⁸ The reasons for rejection were not known in 3 applications.

number where the child could not be located have increased from 3 applications in 2003 to 5 in 2008.

5. APPEALS

228. Of the 54 access applications that were decided in court, only 5 applications were appealed (9%) compared with 6 applications (11%) in 2003. In 2008, 3 of these applications ended with access being granted and 2 in a judicial refusal.

6. TIMING

229. As in previous surveys, we have omitted rejected, withdrawn and pending applications from this analysis. We have no information regarding timing for rejections and pending applications and withdrawn applications are excluded as they cover a wide variety of possible reasons for withdrawal, timing being relevant in only some applications. Applications where access was granted pending a court hearing have also been excluded as they are only an interim measure. Unlike previous surveys, 'other' outcomes have not been completely omitted from the following analysis. In 2008 few 'other' outcomes had information on dates to calculate timings but those that did were for applications which ended with an agreement or a court approved settlement and so the time taken to reach these decisions has been included in the overall averages. However, there will be no in depth analysis of the timing for these 'other' outcomes.

6.1 The time between application and outcome

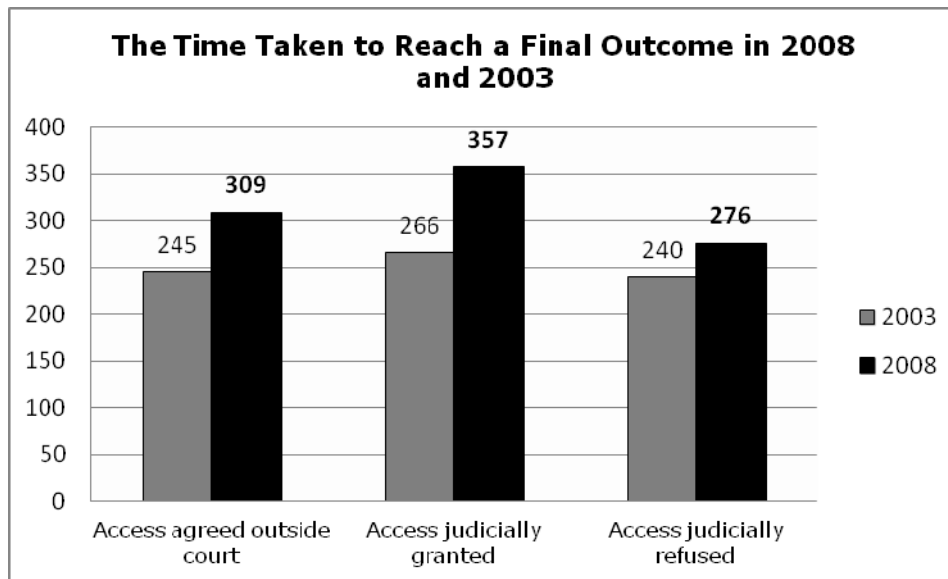
230. The mean number of days taken to arrive at a final settlement was 339 days, but this figure varied considerably depending on the outcome which was reached. The table below shows the mean average time taken from the receipt of the application by the Central Authority of the requested State until the final agreement or court decision. It therefore includes the applications which were decided on appeal.

The time taken to reach an outcome in 2008⁸⁹

	Access agreed outside court	Access judicially granted	Access judicially refused
Mean	309	357	276
Median	246	328	258
Minimum	0	10	50
Maximum	720	860	457
<i>Number of applications</i>	19	34	7

231. The table shows that there was a great variation in the time taken to reach a settlement. Looking at the applications where access was judicially granted, the application resolved most quickly took only 10 days compared with the 860 days taken for the slowest. It should also be remembered that 18% of applications were still pending as of 30 June 2010 and so the averages would have been even higher had they been included.

⁸⁹ Dates were missing for 21 applications.

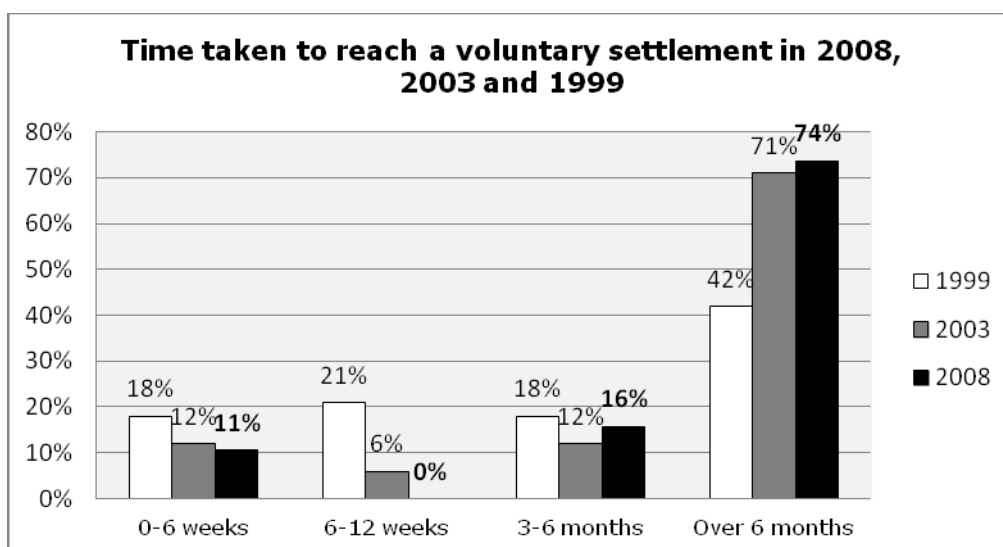


232. As the above chart shows, the average number of days taken to reach each outcome has increased since the 2003 survey and particularly so where access was agreed outside court or when judicially granted.

6.1.a The time taken to reach a voluntary settlement

233. The average time taken to reach a voluntary settlement increased from 245 days in 2003 to 309 days in 2008. In 1999 the time taken to resolve an application was expressed in the form of weeks rather than the number of days. To compare the findings in 2008 with those in 1999 the timings for applications in both 2008 and 2003 have been formatted to fit in with the way in which they were recorded in 1999 in this section and the one that follows. The graph below shows that the proportion of applications taking over 6 months to conclude has increased from 71% (12 applications) in 2003 to 74% (14 applications) in 2008. This is a lot higher than the 42% (14 applications) in 1999. In 2008 the maximum length of time taken to reach a conclusion was 720 days compared with 511 days in 2003.

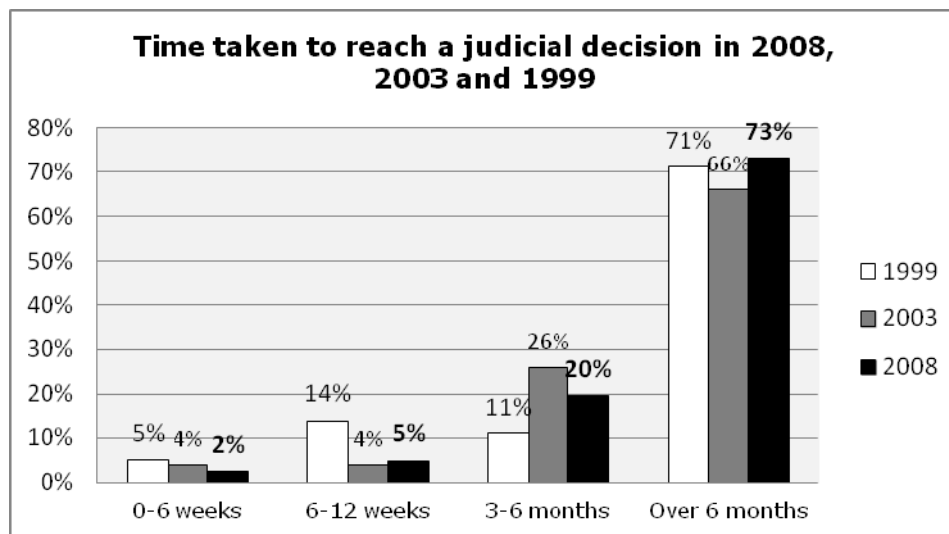
234. The proportion of applications taking 0-12 weeks has fallen dramatically from 39% in 1999, to 18% in 2003 and only 11% in 2008.



6.1.b The time taken to reach a judicial decision

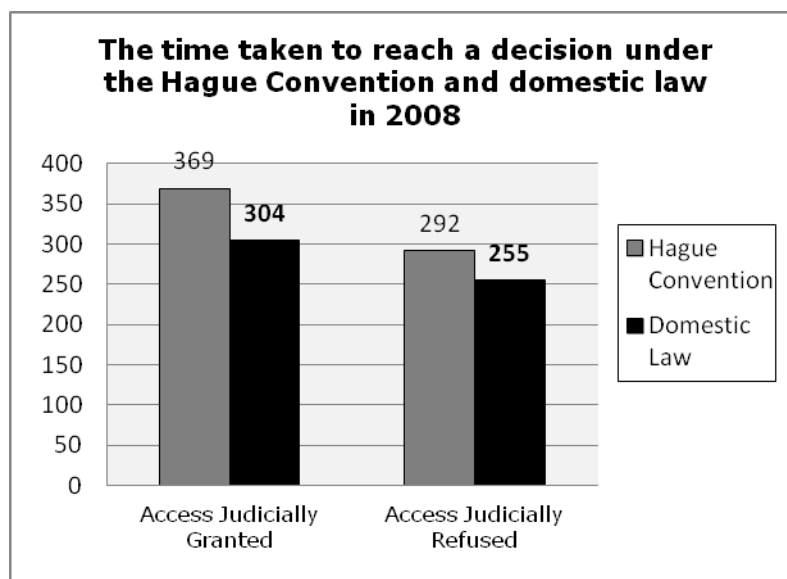
235. A comparison of the time taken to reach a judicial decision in all three surveys does not show as much change as with voluntary settlements. The graph below shows that the proportion of applications taking over 6 months to conclude has risen to 73% but that the proportion of applications taking this long has always been high at 66% in 2003 and 71% in 1999.

236. The proportion of applications resolved within 12 weeks was 19% in 1999 but fell to 8% in 2003 and 7% in 2008.

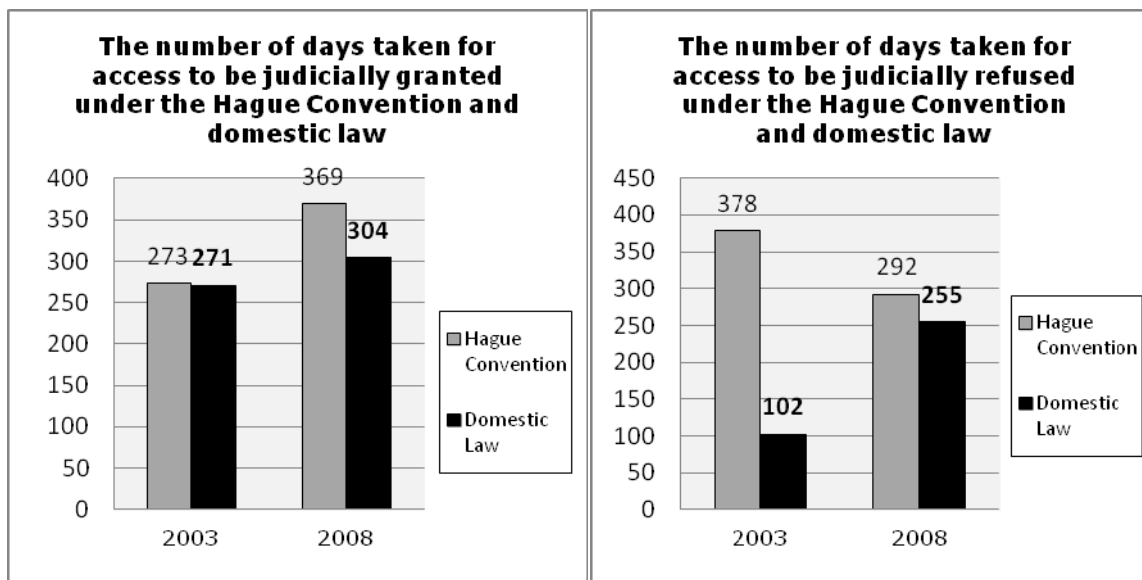


6.2 Timing and whether the decision was made as a Hague application or under domestic law

237. The chart below compares the mean number of days taken to conclude decisions made as Hague applications and under domestic law. Perhaps surprisingly, Hague applications took significantly longer than those decided under domestic law.



238. The graphs below compare the 2008 timings with those in 2003. The statistics show a similar pattern in both surveys as, in both 2008 and 2003, the average Hague application took longer than a decision under domestic law whether it ended with access being granted or refused. In 2003 judicial refusals took considerably longer under the Convention than under domestic law whereas, in 2008, the greatest difference was in applications where access was granted.



6.3 The time taken to reach a final settlement and the States which received the application

239. The graph below shows the average time taken to reach a final outcome in each State where dates were available. The average times varied considerably, from the 2 applications received by Mexico, which took 81 days, to the 2 received by Croatia that were resolved in 549 days.

240. The table also shows the number of applications pending in each State. This is significant as the timing for these pending cases was not included in the column for the average time taken and so, had they been included, these average times would have been longer. Therefore, it may be misleading to look solely at these averages in assessing the speed at which a State concluded its access applications. For example, as mentioned above, Mexico resolved the 2 applications it received more quickly than the 2 received by Croatia but an additional 2 applications in Mexico were pending. By contrast, all applications received by Croatia had been resolved before the cut off date of 30 June 2010.

241. A further 18 States were not included in the table as no information was recorded on the timings for the access applications they received.⁹⁰ 12 applications received by these States were still pending.⁹¹

⁹⁰ Namely: Argentina, Brazil, Colombia, Costa Rica, Cyprus, Ecuador, Finland, Greece, Guatemala, Israel, Lithuania, Malta, Norway, Paraguay, Spain, Sweden, Turkey and UK – Scotland.

⁹¹ 1 in Argentina, Colombia, Costa Rica, Greece, Norway, Turkey and Scotland; 2 in Ireland and 3 in Sweden.

The average number of days taken to reach a final settlement by the Contracting State which received the application

Contracting state child taken to	Mean number of days taken to reach a final outcome	Number of applications where dates available	Number of applications pending
Mexico	81	2	2
Netherlands	125	2	2
UK – England & Wales	130	4	5
South Africa	166	1	1
Czech Republic	191	2	1
Portugal	193	1	2
Italy	219	3	0*
France	278	2	7
Austria	287	2	0
New Zealand	291	8	0
Ireland	296	3	4
Switzerland	344	4	1
Australia	351	6	0
Germany	403	3	13
Canada	406	5	1*
UK - Northern Ireland	421	2	0
Chile	429	1	0
Belgium	440	2	2
Estonia	449	1	1
Romania	450	1	0
USA	450	5	2
Ukraine	533	2	1
Poland	537	1	0
Croatia	549	2	0
Uruguay	636	1	1
Bulgaria	720	1	0
Total	339	68	46

* The numbers marked with an asterisk indicate that outcomes were not known for all applications received by that State and so there may have been more applications pending.

6.3.a Voluntary agreements

The Time taken to reach a voluntary settlement in 2008 and the State which received the application

	0-6 weeks	6-12 weeks	3-6 months	Over 6 months	Total
Australia	1			2	3
Bulgaria				1	1
Canada				2	2
Czech Republic				1	1
Estonia				1	1
France				1	1
Ireland				1	1
Switzerland	1		1	1	3
UK - England and Wales			2	1	3
UK-Northern Ireland				1	1
USA				4	4
Total	2	0	3	14	19

242. The table above shows the States in which voluntary agreements were made and the time it took to come to an agreement. In all the States where there was a voluntary agreement, at least one took over 6 months to finalise. The only States where agreements took less than 6 weeks were Australia and Switzerland.

6.3.b Judicial decisions

The time taken to reach a judicial decision in 2008 and the State which received the application

	0-6 weeks	6-12 weeks	3-6 months	Over 6 months	Total
Australia				3	3
Austria				1	1
Belgium				1	1
Canada				3	3
Chile				1	1
Croatia				1	1
Czech Republic			1		1
France				1	1
Germany				1	1
Ireland	1			1	2
Italy			1	2	3
Mexico		1	1		2
Netherlands			2		2
New Zealand		1		6	7
Poland				1	1
Portugal				1	1
Romania				1	1
South Africa			1		1
Switzerland				1	1
Ukraine				2	2
UK-England and Wales			1		1
UK-Northern Ireland				1	1
USA			1	1	2
Uruguay				1	1
Total	1	2	8	30	41

243. The table above shows the time taken to reach a judicial decision in the court of the requested State. With the exception of Czech Republic, Mexico, the Netherlands, South Africa and UK - England and Wales, at least one judicial decision in each State took over 6 months to conclude. Only 1 application was resolved in 6 weeks (this was received by Ireland) and only 3 were finalised in 12 weeks (received by Ireland, Mexico and New Zealand).

6.4 Timing and appeals

244. Where access was granted on appeal, one application took 255 days to finalise, one 582 days and one 638 days. Of the appeals where access was refused, one took 188 days to conclude and the other 457 days.

245. The table below analyses the number of days taken to conclude judicial decisions that were not appealed. As in 2003, judicial refusals were made significantly more quickly than orders for access. Both outcomes were decided more quickly if appealed

applications were excluded with orders for access taking 344 days compared with 357 days and refusals 257 days compared with 276.

The number of days taken to reach a final outcome in 2008 excluding appealed applications

	Access granted	Access refused
Mean	344	257
Median	302	258
Minimum	10	50
Maximum	860	429
<i>Number of applications</i>	32	5

VIII. A COMPARISON BETWEEN APPLICATIONS FOR RETURN AND APPLICATIONS FOR ACCESS

246. As in previous surveys, the vast majority of applications made under the Convention in 2008 were for return (84%) compared with the proportion of access applications (16%).

247. 68 Contracting States received return applications⁹² in 2008 whereas only 50 States received any access applications.⁹³ This can be compared with 2003 where 61 States received return applications and 40 received access applications.

248. The ratio of return to access applications received by each State varied considerably. 13 Central Authorities received only return applications (China – Hong Kong, Denmark, Dominican Republic, Georgia, Honduras, Hungary, Iceland, Latvia, Luxembourg, Montenegro, Panama, Serbia and Slovenia) and an additional 11 States received over 90% return applications (Austria, Bulgaria, Chile, Greece, Israel, Mexico, Poland, Portugal, Romania, Turkey and Ukraine).

249. By contrast, Costa Rica received a majority of access applications (5 out of 8 applications) and Malta received only one application overall which was for access. In a further 5 States the proportion of return applications was less than 70%. Estonia and Uruguay received 63% return applications (5 out of 8 and 7 out of 11 applications respectively), Croatia received 60% return applications (3 out of 5) and Guatemala and Paraguay received 50% (2 out of 4 and 3 out of 6 applications respectively).

250. As in previous surveys, there was a marked difference between the proportion of taking mothers in return applications and the proportion of respondent mothers in access applications. In return applications 69% of taking persons were mothers compared with 79% of respondents being mothers in access applications. This reflects the pattern found

⁹² This figure includes applications recorded in our outgoing database. No return applications were received by the following: Albania; Armenia; the Canadian provinces and territories of New Brunswick, Newfoundland and Labrador, North West Territories, Nova Scotia, Nunavut, Prince Edward Island, Yukon; the Chinese Central Authority in Macao; El Salvador; Honduras; Luxembourg; Malta; Monaco; Nicaragua; Serbia; and the UK Central Authorities in the Isle of Man, Falkland Islands and Cayman Islands.

⁹³ This figure includes applications recorded in our outgoing database. No access applications were received by the following: Albania, Armenia, Canada (provinces and territories of Manitoba, New Brunswick, Newfoundland and Labrador, North West territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, Yukon), China (Hong Kong and Macao), Denmark, Dominican Republic, Georgia, Germany, Hungary, Iceland, Latvia, Monaco, Montenegro, Nicaragua; Panama, Slovenia, UK (Central Authorities in the Isle of Man, Falkland Islands, Cayman Islands, Bermuda).

in 2003 where 68% of taking persons were mothers and 79% of access respondents and in 1999 where 69% of taking persons and 86% of respondents were female.

251. In 2008, 60% of taking persons in return applications and 50% of respondents in access applications had the same nationality as the requested State. This can be compared with 55% of taking persons and 53% of respondents in 2003 and 52% and 40% in 1999, respectively.

252. As found in previous surveys, access applications were slightly more likely to involve single children, 72% compared with 69% in return applications. In 2003 the proportions of single children applications were 71% in access and 67% in return applications and, in 1999, 69% and 63% respectively.

253. On average, children involved in access applications were older than those involved in return applications. In 2008 the average age of a child in an access application was 7.8 years and 6.4 years in a return application compared with 7.9 years for access applications and 6.3 years for return applications in 2003.

254. With regard to outcomes, the overall return rate of 46%⁹⁴ in return applications can be compared with access being agreed or ordered in 21% of access applications. In 2003, 51% of return applications ended in return and 33% of access applications in access compared with 1999 where the rates were 50% return and 43% access. In 2008, more access applications were pending (17% compared with 8% of return applications), more were withdrawn (31% compared with 18% of return applications) and more were rejected (13% compared with 5% in return applications). Fewer access applications were refused (3% compared with 15% in return applications).

255. Access applications were markedly slower to reach a conclusion than return applications with the average access application taking 339 days compared with 188 days for a return application. Where an application ended with a voluntary return or agreement for access, only 11% of access applications were resolved in 6 weeks compared with 34% of return applications. If an application was decided in court 2% of access applications were resolved in less than 6 weeks compared with 10% of return applications.

⁹⁴ Additionally, 3% of return applications ended in access being agreed or ordered.