

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE 1980 CONVENTION

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: ¹	Austria
<i>For follow-up purposes</i>	
Name of contact person:	Dr. Robert Fucik
Name of Authority / Office:	Federal Ministry of Justice, Department I 10
Telephone number:	00431521522731
E-mail address:	team.z@bmj.gv.at

PART I: RECENT DEVELOPMENTS²

1. Recent developments in your State

1.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child abduction. Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No
 Yes, please specify:

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities³ in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

The Supreme Court gives, in average, more than 5 judgements in every year concerning the 1980 Convention. The most important recent developments seem as follows: (1) return means return to the state of origin, not to the left behind parent (also an important aspect of the 13b-exemption. See e.g. OGH 28.08.2013, 6 Ob 134/13v); (2) The rights of custody are „actually exercised“ even when the contact is not more than twice a month (see OGH 09.10.2014 6 Ob 167/14y); (3) the parent having joint custody and is the primary carer according to Art 162 Abs 2 ABGB (General Civil Code) is not entitled to relocate the child without proper information and giving the other custodial parent the right to utter his opinion in due course bevor the removal. Otherwise a breach of custody and a wrongful removal was done (see OGH 29.11.2016 6 Ob 170/16t)

1.3 Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child abduction.

--

¹ The term "State" in this Questionnaire includes a territorial unit, where relevant.

² This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2011 / 2012 Special Commission, please provide such information here.

³ The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

2. Issues of compliance

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

- No
 Yes, please specify:

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

- No
 Yes, please specify:

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION
--

3. The role and functions of Central Authorities designated under the 1980 Convention⁴

In general

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

- No
 Yes, please specify:
[Please insert text here](#)

3.2 Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

- No
 Yes, please specify:
[Please insert text here](#)

3.3 Has your Central Authority encountered any challenges with the application of any of the 1980 Convention provisions? If so, please specify.

- No
 Yes, please specify:
[Please insert text here](#)

Legal aid and representation

3.4 Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)-(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States you have dealt with?

- No
 Yes, please specify:
[Please insert text here](#)

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?⁵

⁴ See also Section 5 below on “Ensuring the safe return of children” which involves the role and functions of Central Authorities.

⁵ See paras 1.1.4 to 1.1.6 of the “Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter referred to as the “[Conclusions and Recommendations of the 2006 Special Commission](#)”) and paragraphs 32 to 34 of the

- No
 Yes, please specify:

In some states it is rather difficult to collect information concerning legal aid and/or representation for the left-behind parent, especially the process of application for legal aid, as some Central Authorities only provide assistance when asked explicitly (and repeatedly).

Locating the child

3.6 Has your Central Authority encountered any challenges with locating children in cases involving the 1980 Convention, either as a requesting or requested State?

- No
 Yes, please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

For the moment the legal basis for investigations is not absolutely clear. Amendments are in preparation.

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

- No
 Yes, please share any good practice on this matter:

Cooperation with police

Information exchange, training and networking of Central Authorities

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?⁶

- No
 Yes, please specify:

Some international seminars

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

- No
 Yes, please specify:

meetings with Central Authorities of Germany, Czech Republic and Slovakia

Statistics⁷

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

Please insert text here

Prompt handling of cases

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

- No
 Yes, please specify:

Cooperation with Courts and Youth Welfare Authorities on an equal footing

[Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#) (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings").

⁶ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

⁷ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*. note 5).

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

[The actions of the parties](#)

4. **Court proceedings & promptness**

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?⁸

Yes

No, please indicate if such arrangements are being contemplated:

[Please insert text here](#)

4.2 Does your State have mechanisms in place to handle return decisions within six weeks (*e.g.*, production of summary evidence, limitation of appeals, swift enforcement)?

No

Yes, please explain:

[The procedural law gives means for rather informal hearings](#)

4.3 If your response to the previous question is No, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (*e.g.*, procedures, bench-books, guidelines, protocols)?

No, please explain:

[Please insert text here](#)

Yes, please explain:

[Please insert text here](#)

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

[In Cases where the taking parent or even the child is obstructive there are limited means for avoiding delays.](#)

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (*e.g.*, prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

No, please explain:

[No regularities can be found](#)

Yes, please explain:

[Please insert text here](#)

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

Yes

No, please explain:

[Please insert text here](#)

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

Yes

No, please explain:

[Please insert text here](#)

4.8 Please comment upon any cases (whether your State was the requesting or requested State), in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the

⁸ See, [The Judges' Newsletter](#) on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

issue of the child's safe return. What was the specific purpose of the communication? What was the outcome?

No data available

5. **Ensuring the safe return of children**⁹

*Methods for ensuring the safe return of children*¹⁰

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings¹¹ regarding the safe return of children are implemented?

involvement of Youth Welfare Authorities and Family Court assistant social workers.

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

Communication with the state of origin.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

Please insert text here

Use of the 1996 Convention to ensure a safe return

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

No

Yes, please explain:

Please insert text here

Protection of primary carer

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (*e.g.*, domestic or family violence, intimidation, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State? Please explain and provide case examples where possible.

Clarification of protective measures in the State of origin via Communication.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

No experiences.

Post-return information

⁹ See **Art. 7(2) h** of the 1980 Convention.

¹⁰ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹¹ See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra.* note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra.* note 5).at paras 39-43.

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

It is left to the parties.

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

- No
 Yes, please explain:
[Please insert text here](#)

6. **Voluntary agreements and mediation**

6.1 How does your Central Authority (either directly or through any intermediary) take, or is it considering taking, appropriate steps under **Article 7-(c)** to secure the voluntary return of the child or to bring about an amicable resolution of the issues? Please explain:

[Facilitating mediation as a core competence of Family Courts and assistant social workers.](#)

6.2 In what ways have you used the "Guide to Good Practice on Mediation"¹² for the purpose of implementing the 1980 Convention in your State? Please explain:

[In some cases we try to facilitate mediation; unfortunately with poor success.](#)

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?¹³

- No, please explain:
[Please insert text here](#)
 Yes, please explain:
[Please insert text here](#)

7. **Preventive measures**

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?¹⁴

- No
 Yes, please describe:
[Please insert text here](#)

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

- Yes
 No, please explain:

¹² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹³ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

¹⁴ See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

[We consider the freedom of travel as an important matter](#)

8. The Guide to Good Practice under the 1980 Convention

8.1 In what ways have you used the Parts of the Guide to Good Practice¹⁵ to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

- a. Part I on Central Authority Practice. Please explain:
[Please insert text here](#)
- b. Part II on Implementing Measures. Please explain:
[Please insert text here](#)
- c. Part III on Preventive Measures. Please explain:
[Please insert text here](#)
- d. Part IV on Enforcement. Please explain:
[Please insert text here](#)

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

[We inform the relevant authorities how to access the Guide.](#)

8.3 Do you have any other comments about any Part of the Guide to Good Practice?

[Please insert text here](#)

9. Publicity and debate concerning the 1980 Convention

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

- No
- Yes, please indicate the outcome of this debate or discussion, if any:
[Occasionally a case goes public or is subject to a parliamentary inquiry](#)

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

[Forms and practical guides published on the homepage of the Federal Ministry of Justice.](#)

PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION

10. Transfrontier access / contact¹⁶

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

- No
- Yes, please explain:
[Please insert text here](#)

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

¹⁵ All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹⁶ See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra*. note 5) at paras 1.7.1 to 1.7.3.

Please insert text here

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

- a. the granting or maintaining of access rights;
Please insert text here
- b. the effective exercise of rights of access; and
Please insert text here
- c. the restriction or termination of access rights.
Please insert text here

Please provide case examples where possible.
Please insert text here

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"¹⁷ to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

Please insert text here

11. International family relocation¹⁸

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

The Childrens' and Names' Law Amendment Act 2013 (Legal Gazette BGBl I Nr 15/2013) includes provisions for the determination of the habitual residence of a child in Art 162 ABGB (General Civil Code). They can be summarized as follows: Where only one parent is awarded with custody, only she/he has the right to determine the habitual residence of the child. Where both parents have rights of custody either one is declared as primary carer or not. The declared primary carer may determine the habitual residence, but the other parent has to be informed about (cross border) relocations in advance and he/she has to have the opportunity to express his/her view in due course before the relocation. Where both parents are awarded with custody and no one is declared as the primary carer, one of them only can relocate lawfully with the consent of the other parent or with a judgement of the Family Court, declaring the relocation as lawful.

PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES

12. Non-Convention cases and non-Convention States

12.1 Are there any States that you would particularly like to see become a State Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States? Please explain:

India

¹⁷ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹⁸ See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

India

*The "Malta Process"*¹⁹

12.2 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?²⁰

[Please insert text here](#)

- b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Hague Conventions?

No

Yes, please explain:

[Please insert text here](#)

- c. What is your view as to the future of the "Malta Process"?

[Although Austria plays no active role in the Malta Process we are very interested and see this as a promising alternative avenue to the Convention.](#)

<p>PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORT PROVIDED BY THE PERMANENT BUREAU</p>
--

13. Training and education

13.1 Can you give details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had?

[Seminars for judges on regional levels.](#)

14. The tools, services and support provided by the Permanent Bureau

In general

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

- a. The Country Profile available under the Child Abduction Section.

[Please insert text here](#)

¹⁹ The "Malta Process" is a dialogue between certain States Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

²⁰ The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

- b. INCADAT (the international child abduction database, available at < www.incadat.com >).
[Please insert text here](#)
- c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;²¹
[Please insert text here](#)
- d. The specialised "Child Abduction Section" of the Hague Conference website (< www.hcch.net >);
[Please insert text here](#)
- e. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);²²
[Please insert text here](#)
- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.²³ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;
[Please insert text here](#)
- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);²⁴
[Please insert text here](#)
- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;
[Please insert text here](#)
- i. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges
[Please insert text here](#)

Other

14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;
[Please insert text here](#)
- b. To assist States in meeting their Convention obligations; and
[Please insert text here](#)
- c. To evaluate whether serious violations of Convention obligations have occurred?
[Please insert text here](#)

PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS

15. Views on priorities and recommendations for the Special Commission

²¹ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

²² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

²³ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

²⁴ Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

[Avoiding alienation of the left behind parent](#)

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

[Please insert text here](#)

16. Any other matters

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.

[Please insert text here](#)