

**ANALYSE STATISTIQUE DES DEMANDES DÉPOSÉES EN 2003 EN
APPLICATION DE LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR
LES ASPECTS CIVILS DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS**

*établie par le Professeur Nigel Lowe, Mme Emily Atkinson,
Mme Katarina Horosova et Mme Samantha Patterson*

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**A STATISTICAL ANALYSIS OF APPLICATIONS MADE IN 2003 UNDER THE
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION**

*drawn up by Professor Nigel Lowe, Ms Emily Atkinson,
Ms Katarina Horosova and Ms Samantha Patterson*

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sur le fonctionnement de la Convention de La Haye du 25 octobre 1980
sur les aspects civils de l'enlèvement international d'enfants
(La Haye, 30 octobre – 9 novembre 2006)*

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on the Civil Aspects of International Child Abduction
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PREFACE

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

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

Given the experience which the Cardiff University Centre for International Family Law Studies has in this field, the Permanent Bureau invited its Director, Professor Nigel Lowe, to undertake the research in consultation with the Permanent Bureau. Funding for the research was generously made available by the Nuffield Foundation.

The report was presented to the Special Commission of 2001 as Preliminary Document No 3 and was revised and published on the website of the Hague Conference in November 2001. It was decided that a further study should be undertaken to present to the Special Commission of 2006 in order to offer a comparator to the year 1999. The year 2003 was chosen. This report not only presents the findings of the cases undertaken in all Contracting States in 2003 but also offers some comparisons with the study of the 1999 cases.

Once again, the Permanent Bureau invited Professor Nigel Lowe to undertake the research and he was ably assisted by three researchers Emily Atkinson, Katarina Horosova and Samantha Patterson. The Permanent Bureau was involved in a consultative role and in providing some administrative assistance. For a second time the Nuffield Foundation generously agreed to fund the research.

The Permanent Bureau would like to record its thanks to Professor Lowe and his three researchers, and to the Nuffield Foundation. The Permanent Bureau would also like to extend its thanks to the many Central Authorities who co-operated in this project.

William Duncan
Deputy Secretary General
August 2006

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I INTRODUCTION

A. BACKGROUND AND RATIONALE OF PROJECT

This is the second statistical survey into the operation of the Hague Convention on the Civil Aspects of International Child Abduction 1980 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. The first, collected data on all applications made under the Convention in 1999, and its findings were presented at the Fourth Special Commission (Prel. Doc. No 3) in March 2001. An updated version ("the revised version, November 2001") was later published by Bureau in 2002 and is posted on the Hague Conference website (<http://hcch.e-vision.nl/upload/abd2001pd3e.pdf>).

This survey concerns applications made in 2003. As with the 1999 survey, accuracy was sought by approaching each Contracting State for their own data and objectivity was ensured as the study was jointly conducted with the Permanent Bureau. The Nuffield Foundation, based in London, once again agreed to fund the project (they also supported the 1999 Survey) and we are grateful for their generous contribution.

B. METHODOLOGY

The survey is based upon the response to a detailed questionnaire designed to collect information about the number of applications; details about those who abducted the children (in this report referred to as "taking persons" – see further below) and about the children involved; details about the outcome of the application and finally details on the length of time it took to reach the outcome. The questionnaire was modelled on that used for the 1999 survey but was revised in the light of experience gained by that survey. For example, it sought information about the taking person's relationship to the child, rather than their gender as sought in the 1999 survey. It sought information on whether or not the taking person was the child's primary carer (a question not asked in the 1999 survey). Questions about the taking person's nationality specially asked whether they had joint nationality. It sought information about each child involved in the application (the 1999 survey was more general in that respect). The questions on outcome were refined versions of the 1999 survey and those on speed were also improved particularly to bring questions about access applications into line with those asked of return applications. One result of these changes was that it tended to require specific information in response to questions rather than a simple tick box response. Consequently it took rather longer to complete than the 1999 survey. The questionnaire was originally distributed in English or French in July 2004 and in Spanish in August 2004.

The questionnaires sought details of every application made in 2003 regardless of when, or even if, an outcome was reached. The year 2003 was chosen to give as contemporaneous a view as possible (when commissioned it was contemplated that the Special Commission would be held sometime in 2005). To be comparable with the 1999 survey the cut off date for outcome was 18 months after the last possible application could have been made, that was for the purposes of the 2003 survey 30 June 2005. Applications still pending after that date have simply been classified as "pending". While this methodology allows us to give an accurate 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 in which appeals 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 as in made is a comment in itself.

In all we received a response from 58 Contracting States, which compares with responses from 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 (which at times proved problematic) and dealing with subsequent queries and chasing up outcomes on pending applications, 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.

C. THE REPORT

This report is based on replies received by the end of April 2006. It contains an overall analysis of incoming return and access applications and compares the finding with those from the 1999 survey. A separate volume comprising individual country reports has also been produced. To avoid being judgmental and to remain objective we have been careful in the terminology used (for example, rather than refer to "abductor" which may in any event be inappropriate for access applications) we have referred to the person who takes the child in return applications as the "taking person" and the person 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.

The data contained in this report was submitted by Central Authorities from their own records. We received the data between August 2004 and April 2006. Although we have information on incoming and outgoing applications, we have not cross-checked one Central Authority against another. We have, however, used the outgoing data to calculate overall numbers.

D. THE FINDINGS

This report analyses replies received from 45¹ of the then 74 Contracting States (including Bulgaria which acceded during 2003).² This compares with the response from 34 of the then 57 Contracting States in the 1999 survey.

1. The number of return applications

Overall we have analysed 1259 incoming return applications received by the following 45 Contracting States:

Argentina
Australia
Austria
Belarus
Belgium
Belize
Bosnia & Herzegovina
Burkina Faso
Canada ³
Chile
China (<i>i.e.</i> Hong Kong Special Administrative Region)
Croatia
Czech Republic
Cyprus
Denmark

¹ Colombia formally replied and said it was unable to participate in the survey.

² Since 2003 two further States have acceded to the Convention, the Dominican Republic (as of November 2004) and Ukraine (as of September 2006).

³ Excluding Newfoundland which did not respond.

Estonia
Finland
France
Germany
Greece
Honduras
Hungary
Iceland
Ireland
Israel
Italy
Malta
Mexico
Netherlands
New Zealand
Norway
Panama
Poland
Portugal
Romania
Slovakia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Turkey
United Kingdom (<i>i.e.</i> England & Wales, Isle of Man, Northern Ireland and Scotland)
USA

These applications were made by 53 different Contracting States.⁴ By comparison, the 1999 survey analysed 954 incoming return applications received by 30 Contracting States and made by 47 different States.

The following Contracting States have returned the questionnaire and have each indicated that they received no incoming return applications in 2003.⁵

Bahamas
Bulgaria
Canada (<i>i.e.</i> Manitoba, New Brunswick, Northwest Territories, Nunavut, Prince Edward Island and Yukon Territory)
China (<i>i.e.</i> Macao Special Administrative Region)
El Salvador
Fiji
Georgia
Guatemala
Latvia
Lithuania
Luxembourg
Monaco
Nicaragua

⁴ Including two non-Convention countries. Additionally, in one case the requested State was unknown.

⁵ Canada (*i.e.* New Brunswick, Northwest Territories, Prince Edward Island and Yukon Territory), China (*i.e.* Macao Special Administrative Region), Luxembourg, Slovenia, United Kingdom (*i.e.* Bermuda, Falkland Islands and Montserrat) and Uzbekistan similarly received no return applications in 1999.

Slovenia United Kingdom (<i>i.e.</i> Bermuda, Falkland Islands and Montserrat) Uzbekistan
--

2. The number of access applications

Additionally, we have analysed 238 incoming access applications received by the following 27 Contracting States:

Argentina Australia Austria Belgium Canada ⁶ Chile Cyprus Denmark Finland France Germany Greece Hungary Ireland Israel Italy Netherlands New Zealand Poland Portugal Slovakia South Africa Spain Sweden Switzerland United Kingdom (<i>i.e.</i> England & Wales) USA
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These applications were made by 39 different Contracting States.⁷ By comparison, the 1999 survey analysed 197 incoming access applications received by 25 Contracting States and made by 39 different States.

The following Contracting States have returned the questionnaire and have each indicated that they received no incoming access applications in 2003.⁸

Bahamas Belarus Belize Bosnia & Herzegovina Bulgaria Burkina Faso
--

⁶ Excluding Newfoundland which did not respond.

⁷ Including one from a non-Convention State.

⁸ Belarus, Bosnia & Herzegovina, Canada (*i.e.* Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Prince Edward Island, Quebec and Yukon Territory), China (*i.e.* Hong Kong Special Administrative Region and Macao Special Administrative Region), Iceland, Mexico, Slovenia, the United Kingdom (*i.e.* Bermuda, Falkland Islands, Isle of Man and Montserrat) and Uzbekistan similarly received no access applications in 1999.

<p>Canada (<i>i.e.</i> Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec and Yukon Territory)</p> <p>China (<i>i.e.</i> Hong Kong Special Administrative Region and Macao Special Administrative Region)</p> <p>Croatia</p> <p>Czech Republic</p> <p>El Salvador</p> <p>Estonia</p> <p>Fiji</p> <p>Georgia</p> <p>Guatemala</p> <p>Honduras</p> <p>Iceland</p> <p>Latvia</p> <p>Lithuania</p> <p>Luxembourg</p> <p>Malta</p> <p>Mexico</p> <p>Monaco</p> <p>Nicaragua</p> <p>Norway</p> <p>Panama</p> <p>Romania</p> <p>Slovenia</p> <p>Sri Lanka</p> <p>Thailand</p> <p>Turkey</p> <p>United Kingdom (<i>i.e.</i> Bermuda, Falkland Islands, Isle of Man, Montserrat, Northern Ireland and Scotland)</p> <p>Uzbekistan</p>
--

Combining return and access applications, we have analysed a total of 1497 incoming applications. This compares with 1151 incoming applications included in the 1999 survey. Using the data we have collected on outgoing applications which were sent to Contracting States other than those mentioned above, for which we have incoming data, we have information on a total of 1569 applications comprising 1319 return and 250 access applications. There may be some applications between the Contracting States for whom we have no information, however, we estimate that there was a maximum of 1610 Hague applications (comprising roughly 1355 return and 255 access applications made in 2003). This amounts to a 25% increase on the total estimated maximum of 1280 applications comprising roughly 1060 return applications and 220 access applications made in 1999. Of course the 2003 survey includes applications made by up to 17 states that were not Contracting States in 1999. If these States were excluded, the total number of applications would be an estimated 1462 comprising 1225 return applications and 237 access applications – still an increase of 14%.

As in the 1999 survey there was a clear preponderance of return to access applications. Based on the figures we have received we have found an overall ratio of 84%: 16% return to access applications, as compared with the 83%: 17% ratio in the 1999 survey.

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

1. Every application involved at least two Central Authorities.
2. There were more children involved than there were applications. Based on the information we have received we have knowledge of at least 2102 children being involved in Hague applications (1781 in return applications and 321 in access applications) and given that the remaining applications may involve up to 106

children (90 in return applications and 16 in access applications) we estimate that Hague applications involved up to 2218 children. This compares with a top estimate of 2030 children being involved in Hague applications 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 abductions even as between Contracting States to the Hague Convention. For example, some applications were 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 arrangements, or made under the Hague Convention but directly to the national courts concerned and not through the Central Authorities.⁹
4. No estimate is possible of the number of cases in which the Convention had a deterrent effect.

The workload varied between Central Authorities with the USA (NCMEC), handling the most incoming applications (345). England and Wales handled the second highest (159). Overall, however, the Central Authority for England and Wales handled the most applications (159), the USA having split incoming and outgoing applications between two separate bodies, the National Center for Missing and Exploited Children (NCMEC) and the Office of Children's Issues in the State Department. In contrast some Central Authorities handled no applications at all, namely: ¹⁰

Bahamas
 Bulgaria
 Canada (*i.e.* Manitoba, New Brunswick, Northwest Territories, Nunavut, Prince Edward Islands and Yukon Territory)
 China (*i.e.* Macao Special Administrative Region)
 Fiji
 Georgia
 Guatemala
 Latvia
 Lithuania
 Luxembourg
 Monaco
 Nicaragua
 Slovenia
 United Kingdom (*i.e.* Bermuda, Falkland Islands and Montserrat)
 Uzbekistan

II A GLOBAL VIEW OF INCOMING RETURN APPLICATIONS

A. THE APPLICATIONS

1. The number of applications

In this section we analyse **1259** incoming return applications received by **45** Contracting States in 2003.¹¹ These applications were made by a total of 53 different States.

⁹ As is permitted by article 29 of the Hague Convention.

¹⁰ Canada (*i.e.* New Brunswick, Northwest Territories, Prince Edward Island and Yukon Territory), China (*i.e.* Macao Special Administrative Region), Slovenia, United Kingdom (*i.e.* Bermuda, Falkland Islands and Montserrat) and Uzbekistan similarly handled no applications in 1999.

¹¹ For the purposes of the global report we have analysed the United Kingdom jurisdictions separately because of the vast amount of cases handled by England & Wales.

These figures can be compared with the 1999 survey which analysed 954 incoming return applications received by 30 different States. These applications were made by a total of 47 different States.

2. The Contracting States involved

Contracting State That Received the Application 2003

	Number	Percent
USA	286	23%
UK - England & Wales	142	11%
Spain	87	7%
Germany	80	6%
Canada	56	4%
Italy	46	4%
Australia	43	3%
France	42	3%
Switzerland	39	3%
Turkey	35	3%
Ireland	33	3%
Mexico	27	2%
New Zealand	27	2%
Netherlands	26	2%
Belgium	25	2%
Sweden	22	2%
Greece	19	2%
Portugal	19	2%
Poland	18	1%
Chile	17	1%
Argentina	13	1%
Hungary	13	1%
Israel	13	1%
Austria	12	1%
Denmark	12	1%
UK - Scotland	12	1%
Czech Republic	11	1%
South Africa	11	1%
Cyprus	8	1%
Slovakia	8	1%
Romania	7	1%
Finland	6	<1%
Iceland	6	<1%
Bosnia and Herzegovina	5	<1%
China - Hong Kong	5	<1%
Malta	4	<1%
Norway	4	<1%
Croatia	3	<1%
Honduras	3	<1%
Panama	3	<1%
Belarus	2	<1%
Belize	2	<1%
UK - Nth Ireland	2	<1%
Burkina Faso	1	<1%
Estonia	1	<1%
Sri Lanka	1	<1%
Thailand	1	<1%
UK - Isle of Man	1	<1%
Total	1259	~100%

Contracting States That Received No Return Applications 2003¹²

Bahamas Bulgaria Canada - Manitoba Canada - New Brunswick Canada - Northwest Territories Canada - Nunavut Canada - Prince Edward Island Canada - Yukon Territory China - Macau El Salvador Fiji Georgia Guatemala Latvia Lithuania Luxembourg Monaco Nicaragua Slovenia UK - Bermuda UK - Falkland Islands UK - Montserrat Uzbekistan

As found in the 1999 survey, there were far more applications received by the USA than by any other Contracting State, amounting to 286 (23%) overall.¹³ Similarly reflecting the 1999 survey, England and Wales received the second highest proportion (11%), although this was less than the 16% in 1999. Spain received the third highest proportion (7%), which was a substantial increase on the 4% received in 1999.¹⁴ Applications to Spain slightly outnumbered those made in Germany.¹⁵ Canada was the only other Contracting State to receive more than 50 return applications in 2003.

¹² In 1999 the responding Contracting States that did not receive any applications were Belarus, China – Macau, Luxembourg, Slovenia, the United Kingdom (*i.e.* Bermuda, the Falkland Islands, the Isle of Man and Montserrat) and Uzbekistan.

¹³ In 1999 the USA received 22% of the overall number of incoming applications.

¹⁴ In 1999 Spain received the eleventh highest proportion (4%).

¹⁵ In the 1999 survey Germany received the third highest proportion (6%) of applications.

Contracting State That Made the Application 2003 ^a

	Number	Percent
USA	169	13%
UK - England & Wales	124	10%
Germany	109	9%
Mexico	105	8%
Australia	74	6%
France	58	5%
Italy	53	4%
Netherlands	45	4%
Canada	43	3%
Argentina	34	3%
Spain	34	3%
Sweden	32	3%
Belgium	30	2%
New Zealand	28	2%
Ireland	26	2%
Switzerland	26	2%
Israel	21	2%
Colombia	19	2%
Greece	18	1%
Portugal	17	1%
Poland	16	1%
South Africa	15	1%
Hungary	12	1%
Norway	12	1%
Austria	11	1%
Finland	11	1%
Denmark	8	1%
Venezuela	8	1%
Czech Republic	7	1%
Ecuador	7	1%
Luxembourg	7	1%
Turkey	7	1%
Brazil	6	<1%
Cyprus	6	<1%
Serbia & Montenegro	6	<1%
Slovakia	6	<1%
UK - Nth Ireland	6	<1%
UK- Scotland	5	<1%
Chile	4	<1%
Croatia	4	<1%
Panama	3	<1%
Romania	3	<1%
Belize	2	<1%
China - Hong Kong	2	<1%
Estonia	2	<1%
Peru	2	<1%
Sri Lanka	2	<1%
UK - Cayman Islands	2	<1%
UK - Bermuda	2	<1%
Non-Convention Country	2	<1%
FYR of Macedonia	1	<1%
Iceland	1	<1%
Nicaragua	1	<1%
Slovenia	1	<1%
UK - Isle of Man	1	<1%
Uruguay	1	<1%
Zimbabwe	1	<1%
Total	1258	~100%

a. The two non-Convention countries were Iran and Surinam. Additionally, in one case the requesting State was unknown.

As can be seen from the above Table, the pattern of Contracting States making return applications is not quite the same as those receiving them. However, the USA and

England and Wales still made the most applications 169 (13%) and 124 (10%) respectively albeit that in each case it was less than they received. Germany made the third highest proportion (9%) closely followed by Mexico (8%). France and Italy were the only other Contracting States to make more than 50 applications in 2003. Spain and Canada made substantially less applications than they received.

Requested States compared with 1999 figures

Country	2003 Count	2003%	1999 Count	1999%
USA	286	23%	210	21%
UK - England & Wales	142	11%	149	15%
Spain	87	7%	36	4%
Germany	80	6%	70	7%
Canada ¹⁶	56	4%	36	4%
Italy	46	4%	41	4%
Australia	43	3%	64	7%
France	42	3%	42	4%
Switzerland	39	3%	11	1%
Turkey	35	3%	N/A	N/A
Ireland	33	3%	38	4%
Mexico	27	2%	41	4%
New Zealand	27	2%	39	4%
Netherlands	26	2%	26	3%
Belgium ¹⁷	25	2%	9	1%
Sweden	22	2%	14	1%
Greece	19	2%	NR	NR
Portugal	19	2%	11	1%
Poland	18	1%	NR	NR
Chile	17	1%	7	1%
Argentina	13	1%	12	1%
Hungary	13	1%	8	1%
Israel	13	1%	19	2%
Austria	12	1%	9	1%
Denmark	12	1%	11	1%
UK - Scotland	12	1%	10	1%
Czech Republic	11	1%	5	1%
South Africa	11	1%	8	1%
Cyprus	8	1%	NR	NR
Slovakia	8	1%	N/A	N/A
Romania	7	1%	9	1%
Finland	6	< 1%	2	< 1%
Iceland	6	< 1%	4	< 1%
Bosnia and Herzegovina	5	< 1%	3	< 1%

¹⁶ The Province of Newfoundland was not included in the 2003 figures as it did not participate in this survey. On the other hand, the Province of Nunavut was not included in the 1999 survey as the application of the Convention to this Province was extended only in 2000.

¹⁷ Belgium's ratification of the Convention took only effect on the 1 May 1999, consequently the 1999 statistics in relation to Belgium only represents 8 months as opposed to a year.

China - Hong Kong	5	< 1%	4	< 1%
Malta	4	< 1%	NR	NR
Norway	4	< 1%	11	1%
Croatia	3	< 1%	7	1%
Honduras	3	< 1%	NR	NR
Panama	3	< 1%	4	< 1%
Belarus	2	< 1%	0	0%
Belize	2	< 1%	NR	NR
UK - Nth Ireland	2	< 1%	6	1%
Burkina Faso	1	< 1%	NR	NR
Estonia	1	< 1%	N/A	N/A
Sri Lanka	1	< 1%	N/A	N/A
Thailand	1	< 1%	N/A	N/A
UK - Isle of Man	1	< 1%	0	0%
Bahamas	0	0%	NR	NR
China - Macau	0	0%	0	0%
Fiji	0	0%	NR	NR
Georgia	0	0%	NR	NR
Luxembourg	0	0%	0	0%
Monaco	0	0%	NR	NR
Slovenia	0	0%	0	0%
UK - Bermuda	0	0%	0	0%
UK - Falkland Islands	0	0%	0	0%
UK - Montserrat	0	0%	0	0%
Uzbekistan	0	0%	0	0%
UK - Cayman Islands	NR	NR	1	< 1%
Colombia	NR	NR	4	< 1%
Mauritius	NR	NR	3	< 1%
Total	1259	~ 100%	984	~ 100%

N/A - not applicable because it was not a Contracting State in 1999.
NR – no response received in the particular year.

The above Table compares the number and proportion of return applications received by Contracting States in 2003 and 1999. In both surveys the USA received the highest proportion of applications increasing from 210 (21%) to 286 (23%). England and Wales, on the other hand, while receiving the second highest proportion of applications in both surveys, received only 11% in 2003 as opposed to 15% in 1999. Spain replaced Germany in terms of the numbers and proportion of applications received. Indeed the number of applications made to Spain more than doubled from 36 in 1999 to 87 in 2003. In fact the number of applications made to Germany also increased from 70 in 1999 to 80 in 2003, but the proportion dropped from 7% to 6%. Canada received the fifth highest number of applications, 56 in 2003, which was a substantial increase on the 36 received in 1999. Australia received markedly less applications 43 in 2003 compared with 64 in 1999 and was seventh in terms of the number of applications received in 2003 as opposed to fourth in 1999. France also dropped from fifth in 1999 to eighth in 2003 though it received the same number (42) of applications in each survey. Turkey, a new Contracting State in 2000, received the tenth highest number (35) of applications.

Comparing States which responded in both 2003 and 1999

Country	2003 Count	1999 Count	+ /- Count	% Increase/Decrease
USA	286	210	+ 76	+ 36%
UK - England & Wales	142	149	- 7	- 5%
Spain	87	36	+ 51	+ 142%
Germany	80	70	+ 10	+ 14%
Canada	56	36	+ 20	+ 56%
Italy	46	41	+ 5	+ 12%
Australia	43	64	- 21	- 33%
France	42	42	0	0%
Switzerland	39	11	+ 28	+ 255%
Ireland	33	38	- 5	- 13%
Mexico	27	41	- 14	- 34%
New Zealand	27	39	- 12	- 31%
Netherlands	26	26	0	0%
Belgium	25	9	+ 16	+ 178%
Sweden	22	14	+ 8	+ 57%
Portugal	19	11	+ 8	+ 73%
Chile	17	7	+ 10	+ 143%
Argentina	13	12	+ 1	+ 8%
Hungary	13	8	+ 5	+ 63%
Israel	13	19	- 6	- 32%
Austria	12	9	+ 3	+ 33%
Denmark	12	11	+ 1	+ 9%
UK - Scotland	12	10	+ 2	+ 20%
Czech Republic	11	5	+ 6	+ 120%
South Africa	11	8	+ 3	+ 38%
Romania	7	9	- 2	- 22%
Finland	6	2	+ 4	+ 200%
Iceland	6	4	+ 2	+ 50%
Bosnia and Herzegovina	5	3	+ 2	+ 67%
China - Hong King	5	4	+ 1	+ 25%
Norway	4	11	- 7	- 64%
Croatia	3	7	- 4	- 57%
Panama	3	4	- 1	-25%
Belarus	2	0	+ 2	+ 200%
UK - Nth Ireland	2	6	- 4	- 67%
UK - Isle of Man	1	0	+ 1	+ 100%
China - Macau	0	0	0	0%
Luxembourg	0	0	0	0%
Slovenia	0	0	0	0%
UK - Bermuda	0	0	0	0%
UK - Falkland Islands	0	0	0	0%
UK - Montserrat	0	0	0	0%
Uzbekistan	0	0	0	0%
Total	1158	976	182	+ 19%

The above Table highlights the number of return applications made comparing the differences between the participating States to both surveys. There was an overall increase of 19% but this masks a number of divergent changes. As already mentioned, the number of applications made to Spain increased from 36 to 87 a rise of 142%.

Proportionally, however, the greatest rise was in the applications made to Switzerland, which rose 255% from 11 in 1999 to 39 in 2003. There were substantial rises too for Belgium, 178% (25 applications in 2003 compared with 9 in 1999), though this accounted for by the fact that Belgium's ratification of the Convention only took effect in May 1999; Chile, 143% (17 applications in 2003 compared with 7 in 1999); Portugal, 73% (19 applications in 2003 compared with 11 in 1999) and Sweden 57% (22 applications in 2003 compared with 14 in 1999). There were notable rises too in applications made to Canada, up to 56% (56 applications made in 2003 compared with 36 in 1999) and to the USA, up to 36% (286 applications made in 2003 compared with 210 in 1999).

Conversely, a number of Contracting States received less applications in 2003 compared with 1999. The greatest decrease was experienced by Mexico which received 34% less return applications (27 in 2003 compared with 41 in 1999). There were similar reductions of 33% in the case of Australia (43 in 2003 compared with 64 in 1999) and 31% in the case of New Zealand (27 in 2003 compared with 39 in 1999). Most of the latter reductions were because less applications were made between Australia and New Zealand. There was a 5% reduction in applications received by England and Wales (142 in 2003, compared with 149 in 1999).

Comparing Received Return Applications in 2003 and 1999 Excluding Those Made and Received by Newly Contracting States after 1999¹⁸

Country	2003 Count	1999 Count	+ /- Count	% Increase/Decrease
USA	284	210	74	+ 35%
UK - England & Wales	141	149	-8	- 5%
Spain	86	36	50	+ 139%
Germany	77	70	7	+ 10%
Canada	56	36	20	+ 56%
Italy	45	41	4	+ 10%
Australia	43	64	-21	- 33%
France	41	42	-1	+ 2%
Switzerland	38	11	27	+ 245%
Ireland	33	38	-5	- 13%
Mexico	27	41	-14	- 34%
New Zealand	27	39	-12	- 31%
Netherlands	26	26	0	0%
Belgium ¹⁹	24	9	15	+ 167%
Sweden	21	14	7	+ 50%
Greece	18	21	-3	- 14%
Poland	18	23	-5	- 22%
Portugal	17	11	6	+ 54%
Chile	17	7	10	+ 143%
Hungary	13	8	5	+ 63%
Israel	13	19	-6	- 32%
Argentina	12	12	0	0%

¹⁸ The numbers of applications received in 1999 by Bahamas, Belize, Burkina Faso, Cyprus, Fiji, Georgia, Greece, Honduras, Malta, Monaco and Poland were taken from the 1999 outgoing return applications database as these Contracting States did not participate in the 1999 survey. On the other hand, the numbers of applications received in 2003 by Colombia, Mauritius and UK – Cayman Islands were taken from the 2003 outgoing return cases database as these Contracting States did not participate in the 2003 survey. Taking account of the fact that Belgium's ratification of the Convention took only effect on 1 May 1999, the applications received until 30 April 2003 were excluded from the 2003 figure.

¹⁹ An exact comparison cannot be made since Belgium's ratification only took effect in May 1999.

UK - Scotland	12	10	2	+ 20%
Austria	11	9	2	+ 22%
South Africa	11	8	3	+ 38%
Denmark	10	11	-1	+ 9%
Czech Republic	10	5	5	+ 100%
Colombia	9	4	5	+ 125%
Cyprus	8	1	7	+ 700%
Romania	7	9	-2	- 22%
Iceland	6	4	2	+ 50%
China - Hong Kong	5	4	1	+ 25%
Bosnia and Herzegovina	4	3	1	+ 33%
Finland	4	2	2	+ 200%
Croatia	3	7	-4	- 57%
Honduras	3	1	2	+ 200%
Mauritius	3	3	0	0%
Norway	3	11	-8	- 72%
Belarus	2	0	2	+ 200%
Belize	2	0	2	+ 200%
Panama	2	4	-2	- 50%
UK - Nth Ireland	2	6	-4	- 67%
Burkina Faso	1	0	1	+ 100%
UK - Isle of Man	1	0	1	+ 100%
Bahamas	0	2	-2	- 100%
China - Macau	0	0	0	0%
Fiji	0	0	0	0%
Georgia	0	1	-1	- 100%
Luxembourg	0	0	0	0%
Monaco	0	0	0	0%
Slovenia	0	0	0	0%
UK - Bermuda	0	0	0	0%
UK - Cayman Islands	0	1	-1	- 100%
UK - Falkland Islands	0	0	0	0%
UK - Montserrat	0	0	0	0%
Uzbekistan	0	0	0	0%
Total	1196	1033	163	+ 16%

The above Table further analyses the number of return applications received by excluding applications made by and received from countries that became Contracting States after 1999 in the 2003 figures. In this way it is intended to shed light on whether the overall total increase in the number of applications is solely accounted for by the increasing number of Contracting States. As can be seen from the overall total, even excluding applications made by newly Contracting States there was an overall rise of 16% (1196 applications made in 2003, compared with 1033 in 1999). In other words, there was a real increase in the number of return applications made in 2003 compared with 1999.

B. THE TAKING PERSON

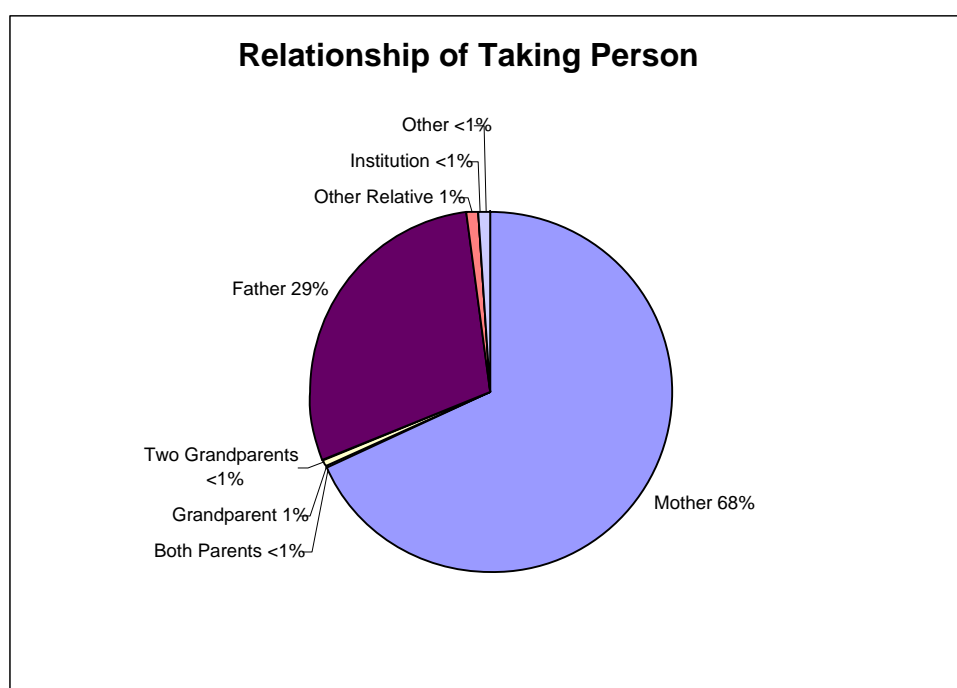
Unlike the 1999 questionnaire, which merely enquired about the gender of the taking person (*i.e.* simply male, female or both), the 2003 survey sought information about the relationship between the taking person and the child. Consequently the later survey has

produced more extensive information about the taking person identifying, for example, in addition to mothers and fathers, grandparents, other relatives and institutions.

1. The relationship of the taking person²⁰

Relationship of the Taking Person

	Number	Percent
Mother	854	68%
Father	367	29%
Both Parents	1	<1%
Grandparent	9	1%
Two Grandparents	4	<1%
Other Relative	11	1%
Institution	1	<1%
Other	6	<1%
Total	1253	~100%



The 2003 data shows that a high proportion, 68%, of 'taking persons' in the survey were the mother of the child. These results mirror the 1999 results (insofar as 'female' can normally be taken to mean 'mother')²¹ which showed that 69% of taking persons were female.²²

As in 1999, this overall finding masks differences between Contracting States. Closer analysis shows that in some States, for example, the Czech Republic, Finland and Slovakia, all the taking persons (100%) were mothers, while in Scotland 92% were. Other States in which there was a significant proportion of mothers being the taking person were Poland (89%), Israel and New Zealand (each 85%), Chile (82%) and

²⁰ In 6 of the applications, the gender of the taking person was not stated.

²¹ In the Part I of the 1999 Report, p. 8, it was found that, as a general rule, in almost all applications females and males corresponded to mothers and fathers. This was based on information obtained from the USA which accounted for most of the applications in that year.

²² This in turn conforms to the pattern found by Lowe and Perry in their research on England and Wales in 1996. Lowe, N. & Perry, A., "International child Abduction – The English experience" (1999) 48 ICLQ 127.

Australia (81%). In contrast, there were 11 States in which the majority of taking persons were fathers. In Argentina, for example, 77% of taking persons were fathers. Other States where fathers formed the majority include Austria (67%) and Turkey (60%).

It might be noted that these more detailed findings do not always reflect what was found in the 1999 survey. For example, the proportion of taking mothers being taking persons with regard to applications made to Sweden declined from 86% to 59% and in Denmark from 91% to 75%.

Interestingly, the Anglo-American difference identified in the 1999 survey²³ is not evident in the 2003 survey: in applications made to the USA by England and Wales 76% of taking persons were mothers and with respect to those made to England and Wales by the USA 72% were mothers.

The above Table also shows that in 13 applications (2%) the taking persons were grandparents and in a further 10(1%), other relatives.²⁴

2. The status of the taking person as carer in relation to the child

Unlike the 1999 survey, the 2003 survey included a specific question about whether or not the taking person was the primary or joint primary carer. For many Contracting States this proved too difficult a question and the overall response rate was disappointingly low with information only being available in 298 of the 1259 applications (24%). Of these 130 were from England and Wales and upon which we conducted a more detailed study. Clearly, however, caution needs to be exercised in relation to the overall representativeness of the following findings.

Status of Taking Person

	Number	Percent
Primary or Joint Primary Carer	204	68%
Non-Primary Carer	94	32%
Total	298	100%

The Table above shows that in 68% of cases, the taking person was the primary carer or joint primary carer of the child.²⁵

²³ In the 1999 Survey the respective figures were 85% and 58%. This Anglo-American divergence was first noted by Lowe N. in "The 1980 Hague Convention on the Civil Aspects of International Child Abduction: An English Viewpoint" (2000) 33 NY Jo of Int Law and Politics 179 at 194-195.

²⁴ There was a similar finding by Lowe and Perry, *op. cit.*, at 132. The "other relatives" included aunts, uncles, stepmothers, stepfathers and brothers. Among the "other" taking persons was a father's girlfriend, a legal guardian and a neighbour.

²⁵ 123 taking persons were thought to be primary carers (41%) and 81 were thought to be joint primary carers (27%).

Status as Carer and the Relationship of Taking Person to Child

	Relationship of Taking Person to Child								Total	
	Mother		Father		Other Relative		Other		Number	Percent
	Number	Percent	Number	Percent	Number	Percent	Number	Percent		
Primary or Joint Primary Carer	179	84%	23	28%	0	0%	1	50%	203	68%
Non-Primary Carer	32	15%	59	72%	3	100%	1	50%	95	32%
Total	211	~100%	82	100%	3	100%	2	100%	298	100%

The above Tables show that, predictably, significantly more mothers were primary or joint primary carers than fathers. In 179 (84%) applications, mothers were primary or joint carers of the child. In contrast, only 23 (28%) of fathers were primary or joint carers. It may be, however, that the more representative picture is revealed by the findings in England and Wales where information about the status of the taking person was available in 130 of the 142 return applications made. From this it was found that 86% of mothers who were taking persons were the primary or joint primary carer but only 14% of fathers were.

3. The nationality of the taking person²⁶

Previous research²⁷ had identified a category of taking persons presumed to be "going home" having the same nationality as the requested State. Accordingly, as in 1999, the 2003 survey sought information about the taking person's nationality, but unlike the former, the latter also enquired whether the taking person had dual nationality.

Taking Person Same Nationality as Requested State^a

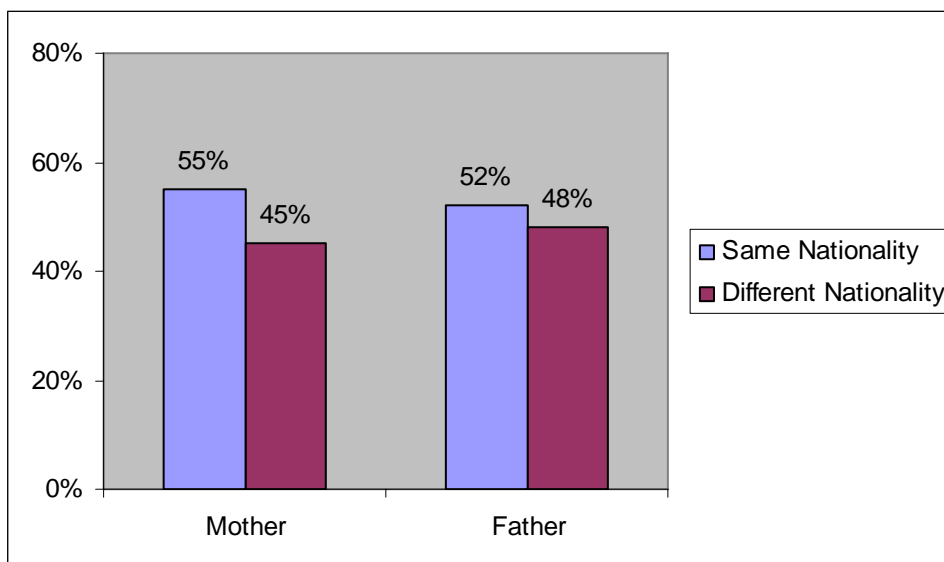
	Number	Percent
Same Nationality	618	55%
Different Nationality	512	45%
Total	1130	100%

a. Additionally, in one case the nationality was not applicable as the taking person was an institution.

As the above Table shows, 55% of taking persons had the same nationality as the requested State (including 92 cases (8%) where the taking person had dual nationality, one nationality being that of the requested State) and 45% of taking persons had a different nationality (including 20 cases (2%) where the taking person had dual nationality, both nationalities being different from that of the requested State).

²⁶ In 121 applications the nationality of the taking person was not stated and in one case the issue was not applicable.

²⁷ E.g. Greif G. and Hegar R. *When Parents Kidnap*, the Free Press, Macmillan 1993 and Lowe N. and Perry A., *op. cit.*, at note 22.



The Chart above compares the 2003 findings with those of the 1999 survey from which it can be seen that the overall findings differ very little with 55% of the taking persons having the same nationality as the requested State in 2003 as opposed to 52% in 1999. As it did in 1999, this figure again contrasts with earlier research indicating that a slightly higher proportion of taking persons could be assumed to be going home.²⁸

The overall figures mask interesting differences between Contracting States, for example in Switzerland, contrary to the global norm, 77% of taking persons were not Swiss nationals and the proportion was similar in Spain (74%) and Sweden (71%). In Poland on the other hand, all of the 18 respondents were Polish.

4. The relationship and nationality of the taking person combined²⁹

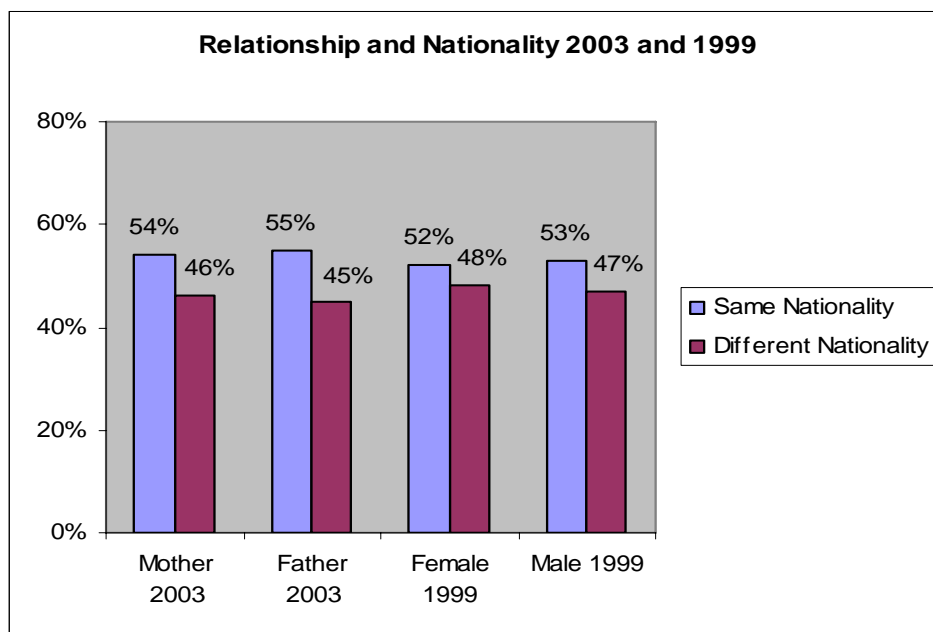
Nationality and the Relationship of Taking Person to Child

	Gender/Relationship of Taking Person to Child							Total
	Mother	Father	Grandparen	Both Grandparent	Other Relative	Institution	Other	
n/a	0	0	0	0	0	1	0	1
Same Nationality	416	186	3	3	5	0	1	614
Different Nationality	348	154	4	0	2	0	4	512
Total	764	340	7	3	7	1	5	1127

The above Table shows the nationality of the taking person in relation to their gender. Using the additional detail in the 2003 survey, we can now consider the relationship of the taking person (as opposed to merely their sex) in relation to their nationality.

²⁸ See comments in the Part I of the 1999 Report, p. 9 on both Greif, G. & Hegar, R., *When Parents Kidnap*, The Free Press. Macmillan, 1993 and Lowe, N. & Perry, A., *op. cit.* at note 22.

²⁹ This information was not available in 132 of the 1259 applications.



This above Chart compares the nationality of just mothers and fathers with the female and male categories used in the 1999 study.³⁰

Regardless of gender the taking persons were more often recorded as being of the same nationality as the requested State.³¹ In 2003 54% of mothers and 55% of fathers were nationals of the requested State. In 1999 it was found that 52% of females and 53% of males were nationals of the requested State.³²

In the 1999 report, it was suggested that males were marginally more likely than females to be attempting to take the child 'home' when they take the child from their country of habitual residence but on reflection, judging from both the 2003 and 1999 findings it seems fairer to say that mothers and fathers are equally likely to be taking a child home.³³

C. THE CHILDREN

1. The total number of children

Altogether, in 2003 there were at least 1781 children involved in the 1259 incoming return applications,³⁴ which is an average of 1.42 children per application compared with an average of 1.46 in 1999.³⁵

2. Single children or sibling groups³⁶

³⁰ As can be seen in the table above, there were also respondents recorded as being grandparents, both grandparents, other relatives, institutions, and 'other'.

³¹ But this of course was not true for all Contracting States; in Sweden and Spain, for example, only 25% and 27% of mothers had the same nationality as the requested State.

³² Again, these results only mirror the 1999 results insofar as 'female' can normally be taken to mean 'mother' and 'male' can normally be taken to mean 'father'. In 2003 it is known that in 32 (3%) of all applications this was not the case and the taking person had some other relationship to the child.

³³ This is based on the assumption that taking persons going to the country of which they are a national are in fact going home. They may of course be going to that country because of extended family, or other reasons. They themselves may not regard that country as 'home'.

³⁴ The data was only available in 1257 of the 1259 applications therefore there are at least another 2 children involved in addition to the basic figure of 1779 children which is confirmed. Similar projections were used in 1999 to gain an approximate figure (single or multiple child information was used to multiply any figures accordingly), see Part I of the Report 1999 p. 11, n.15.

³⁵ This is based on the projected figures of 1781 children in 1259 applications in 2003 compared with 1394 children in 954 applications in 1999.

³⁶ Information on this was not available in one application.

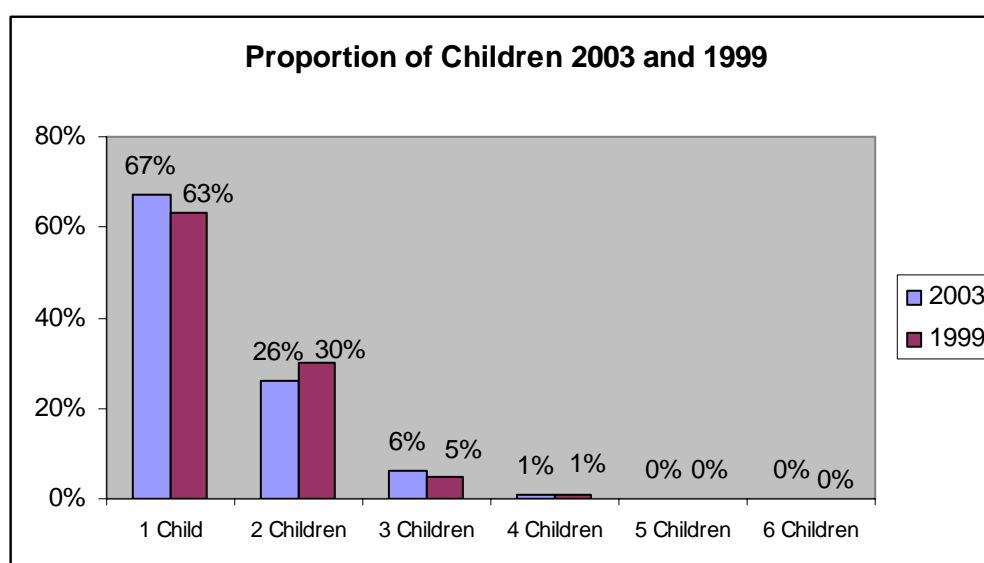
Single Child or Sibling Group

	Number	Percent
Single Child	841	67%
Sibling Group	417	33%
Total	1258	100%

The above Table shows that globally 67% of applications involved a single child. This is similar to the 1999 survey which recorded 63% of applications concerning single children. Although there has been a slight increase in the number of single child applications, it does not seem significant.

Number of Children

	Number	Percent
1 Child	841	67%
2 Children	329	26%
3 Children	72	6%
4 Children	14	1%
5 Children	1	<1%
6 Children	1	<1%
Total	1258	~100%



In 2003, 93% of applications involved 1 or 2 children. In 1999 this figure was the same. As in the 1999 survey there were fewer cases involving 3 or more children and in 2003 there were only 2 cases involving sibling groups of 5 or 6 children, one from the USA and one from Denmark. There were only 6 States where the applications involving single children accounted for less than 50%. Of these only Romania and Netherlands received a significant number of applications.³⁷

Overall the findings of the 2003 survey mirror those of the 1999 survey.

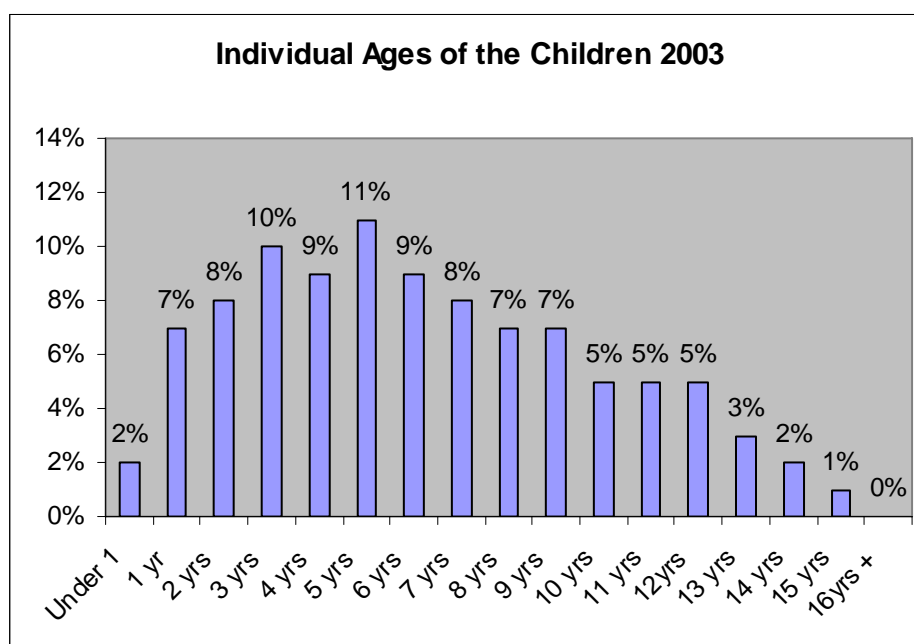
3. The age of the children³⁸

³⁷ The other States were Honduras, Norway, Sri Lanka and Thailand.

³⁸ This information was not available in relation to 136 children.

Individual Ages 2003

	Number	Percent
Under 1	25	2%
1 yr	115	7%
2 yrs	137	8%
3 yrs	171	10%
4 yrs	147	9%
5 yrs	176	11%
6 yrs	149	9%
7 yrs	134	8%
8 yrs	119	7%
9 yrs	117	7%
10 yrs	85	5%
11 yrs	85	5%
12 yrs	77	5%
13 yrs	55	3%
14 yrs	28	2%
15 yrs	21	1%
16 yrs or older	4	<1%
Total	1645	~100%



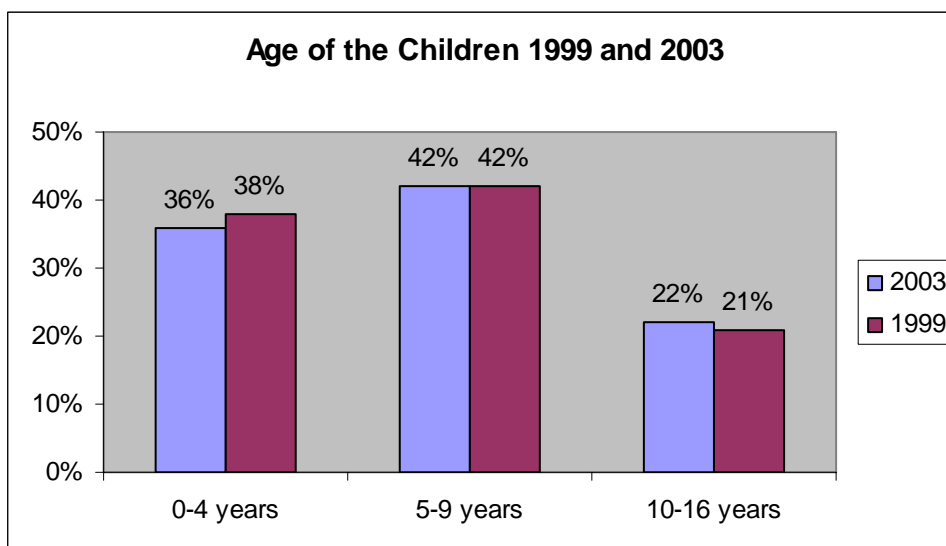
The above Table and Chart show the ages of the individual children involved. The 1999 survey did not ask for a specific age and information was obtained in relation to which age band the child came in. It appears that abductions of babies are a rarity and the numbers tail off the older the child becomes. Globally the number of children peaks at age five. Over half, 55%, of abductions were of children aged 1 - 6.

It is interesting that 4 cases involved children aged 16 years or older as such children are outside the Convention. In 1999 there was one such case.

We have comparable information regarding the age bands of the children in 2003 and 1999.

Age Band of the Children 2003

	Number	Percent
0-4 years	595	36%
5-9 years	695	42%
10-16 years	352	22%
Total	1645	100%



Of the 1645 children included, 42% were aged between 5 and 9 years old. This is the same as the figure recorded in 1999. The proportion of children aged between 10-16 years slightly increased from 21% to 22%. Similarly, there was a slight decrease in the percentage number of 0-4 year olds.

A possible significance of the rise in age of children involved in abduction applications is that it may lead to an increased use of the 'child's objections' exception. As we shall later, however, this does not appear to have been the case globally.³⁹ Indeed, the use of this defence has decreased (from 13% to 9%.)

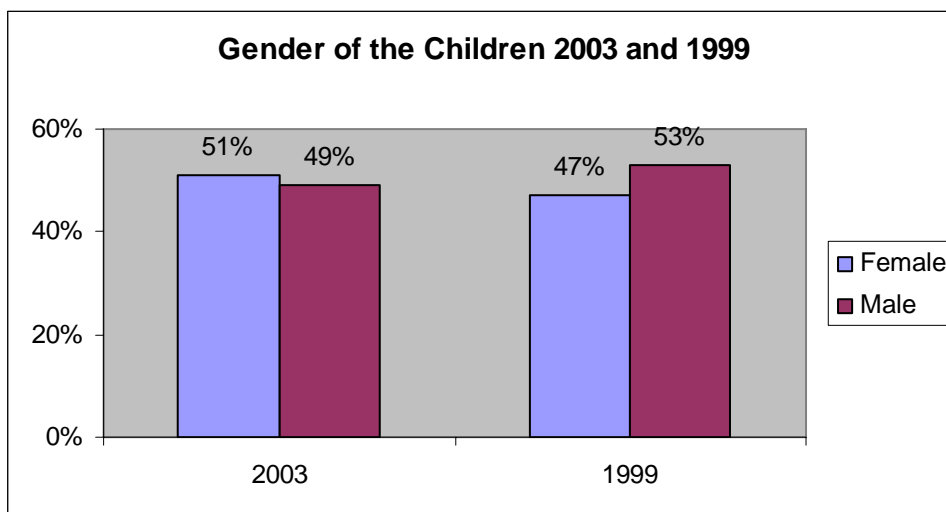
4. The gender of the children⁴⁰

Gender of the Children

	Number	Percent
Female	898	51%
Male	870	49%
Total	1768	100%

³⁹ See below.

⁴⁰ Information was not available for 13 children.



Of the 1768 children whose gender was stated, roughly half (51%) were males and half (49%) females. This compares with 53% recorded as males and 47% as females in 1999.

While the proportion of male and female children was relatively equal in most Contracting States, there was a markedly higher proportion of male children in applications to, for example, Slovakia (88%), Greece (83%), South Africa (33%) and Israel (65%). Conversely there was a marked minority of male children involved in applications to Poland (14%), the Czech Republic (33%), Mexico (36%), Hungary (37%), Finland and Turkey (each 38%).

D. THE OUTCOMES

The outcomes of the applications represent a crucial part of this analysis. We must stress that that outcomes analysed in this report are for all applications received in 2003 regardless of whether an outcome was reached in that year, or later, or even at all. All cases that are still open at 30th June 2005 have been classed as 'pending'.

From our database of outgoing applications we know of 72 cases which were received by Contracting States other than those analysed in this report. When the outcomes of these cases 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.⁴¹

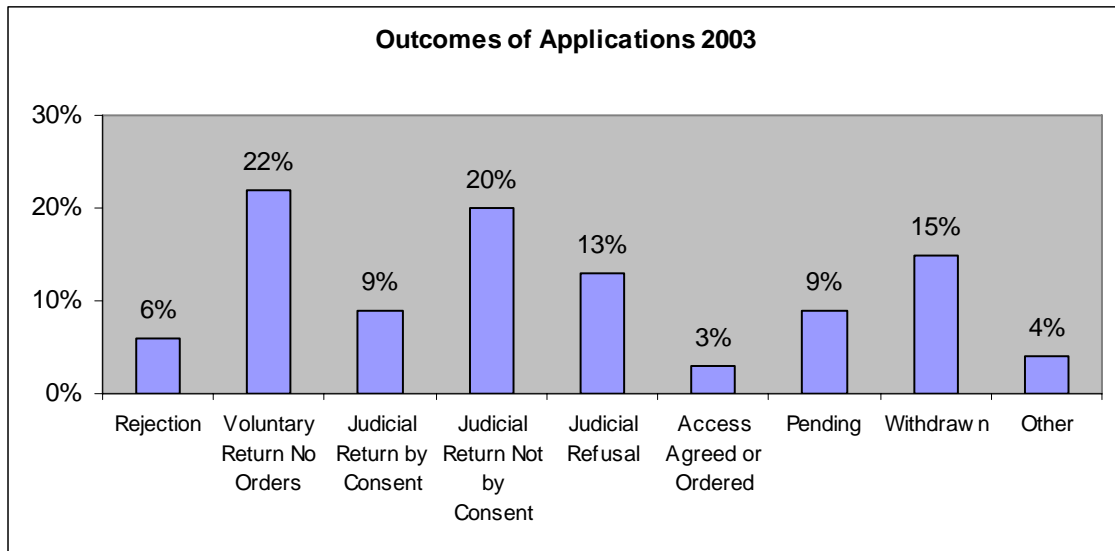
1. Overall outcomes⁴²

⁴¹ When the extra 72 cases are added, the percentage of judicial returns falls by 1% to 28%, and the percentage of judicial refusals falls by 1% to 12%. The percentage of withdrawn cases also falls by 1% to 14%, and the percentage of pending cases rises by 2% to 11%. There is no change in the other figures.

⁴² The outcome was unknown in 18 of the 1259 cases.

Outcome of Application

	Number	Percent
Rejection	76	6%
Voluntary Return No Court Orders	267	22%
Judicial Order for Return by Consent	113	9%
Judicial Order for Return Not by Consent	248	20%
Judicial Refusal	157	13%
Access Agreed or Ordered ³³	38	3%
Application Pending	113	9%
Withdrawn	180	15%
Other	49	4%
Total	1241	~100%



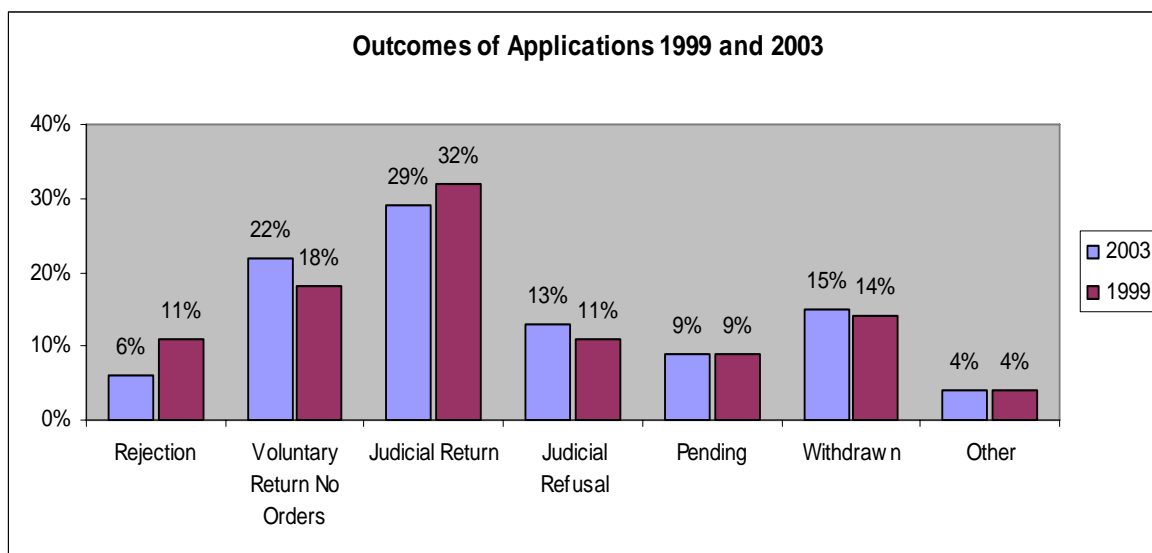
The above Table and Chart shows the outcome of all applications in 2003. In addition to this there were 18 cases in which the outcome was unknown.

Unlike the 1999 study, the 2003 survey shows the breakdown of judicial return orders with and without consent. It also shows the number of cases in which access was agreed instead of a return.⁴⁴ This accounts for a total 38 cases (3%).⁴⁵

⁴³ 12 were voluntarily agreed and 26 were judicially granted with or without consent.

⁴⁴ This figure includes cases recorded as: order for access judicially granted; dismissed - consent order for access made; withdrawn - consent order for access made; and withdrawn - access agreed no orders. For more detailed comment on access, see section 19 below.

⁴⁵ This information was not sought in the 1999 survey, however we do know that in England and Wales in that survey, these cases were categorised as 'other' and accounted for 7 applications (5%).



The above chart categorises the outcomes in a way that they are comparable with the 1999 figures. 'Judicial Returns' includes orders made with and without consent and the applications that ended in access being agreed or ordered have been classed as 'Other'.

Proportionally, the figures show that a judicial order for return (with or without consent) was the most common outcome for an application, with a combined total of 361 cases (29%). Although this is a slight decrease, it is similar to the figure of 32% found in 1999.⁴⁶ The second highest category of outcome was that of voluntary returns – 267 cases (22%). Although a slight increase, this is similar to the figure of 18% recorded in 1999. This is interesting as the 2003 survey has distinguished between voluntary returns entirely outside the court and voluntary returns involving judicial consent orders therefore, if anything, one may have expected this figure to have decreased. Altogether, 51% of applications (assuming agreements or orders were actually enforced) ended in the return of the child. This compares with 50% recorded in 1999.

Of all the applications that resulted in the return of the child, 57% were the result of judicial return orders and the remaining 43% were the result of voluntary agreements. These results are similar to the figures of 64% and 36% respectively in 1999.

Altogether, 544 of the 1230 cases (44%) in which the outcome was known went to court.⁴⁷ This compares with 43% as found in the 1999 survey. The latest figure however takes into account the more detailed information we have now obtained regarding court orders for access being made.⁴⁸ If cases resulting in access orders are excluded from the figure of applications going to court then this would be 42%.⁴⁹ Altogether, of the applications concluded in court (ie; a return, refusal or access order was made), 66% ended in a judicial return in 2003. If we do not include the applications that resulted in an access order (*i.e.* only judicial returns and refusals) then 70% ended in a judicial return in 2003.⁵⁰ Either way, this is a decrease on the figure of 74% in 1999. Including judicial access cases, overall, 66% of cases ended in a return order, 5% ended in an access order and 29% resulted in a judicial refusal. In 1999, 26% ended in a judicial refusal.⁵¹

⁴⁶ This is based on the assumption that consent orders were recorded as judicial returns (rather than voluntary returns) by individual Central Authorities, as is thought to be the case.

⁴⁷ This figure does not include the 49 cases (4%) with an 'other' outcome.

⁴⁸ The number of cases going to court includes judicial returns with and without consent (361 cases, c.66%), judicial refusals (157 cases, c.29%) and (in addition to the 1999 results) cases where an order for access was made (26 cases, c.5%).

⁴⁹ This would have been the case in the 1999 survey where only judicial returns and judicial refusals would have been included. Access cases were most likely classified as 'other', withdrawn or possibly as a refusal.

⁵⁰ 361 of the 544 cases or 361 of the 518 cases respectively.

⁵¹ This 2003 judicial refusal figure increases to 30% if access orders are not included in the number of cases going to court.

The proportion of pending applications at 9% is the same as the 1999 figure. These figures are based on the cut-off point of 30th June 2005, which is a minimum of 18 months and a maximum of 2 ½ years after the applications were made.

Globally, there were 76 rejections, amounting to only 6% of applications. This is significant decrease on the figure of 11% recorded in 1999. 180 applications which accounted for 15% of all cases were withdrawn which compares with the proportion of 14% found in 1999.⁵²

In 2003, excluding 6 cases in which there were different outcomes for different children,⁵³ there were 49 cases (4%) in which an 'other' outcome was reached. In 6 of these cases the applicant took the child back to the requesting State without an agreement with the taking person or a return order. In another 6 cases the applicant agreed that the child would remain with the taking person in the requested State. In 4 cases the exact outcome was not made clear. In another 4 cases, there was some form of judicial settlement and in one case some form of out of court settlement, but it was unclear what was agreed. 4 further applications the applicant moved to the requested State. In one additional case the applicant removed the child to a third State. In three cases the child became 16 years old. In 2 applications the taking person was arrested, the child placed in social services and then handed over to the applicant. In one application the applicant recovered the child in a third State. In another, a sole custody order in favour of the abductor was made in the requested State. In one application, custody was given to the abductor by a court in the requesting State and in another custody was signed over to the applicant by the abductor. In one further application, a return order was discharged by an appellate court order because of enforcement issues.⁵⁴

2. The outcomes by Contracting States which received the applications⁵⁵

⁵² In the 2003 survey 'withdrawn' applications do not include cases which were withdrawn in order for access to be agreed. These have been recorded as 'access' cases. In 1999 such cases may have been recorded as 'withdrawn' or 'other' by different Central Authorities. For a detailed analysis of withdrawn cases, see section 18.

⁵³ These cases were recorded as 'other' outcome. The different outcomes for different children were as follows: application rejected for one child (turned 16 years), the other child's application was withdrawn; one child returned but the other child stayed (judicial refusal based on child's objections); 4 of the children returned but the older two children stayed (judicial refusal on appeal based on the children's objections); application for one child was withdrawn, the other child returned voluntarily; application rejected for one child (turned 16 years), the case is pending for the other child; and lastly, a voluntary agreement was reached where one child stayed and the other two returned (Italy).

⁵⁴ One case was closed as the requesting Central Authority did not provide enough information to locate the child. In one application the parties agreed that the child would live with the mother in summer and with the father in winter. In one further application, the child was removed repeatedly and she was returned on the basis of a return order made after the first wrongful removal. In one application custody was dealt with without recourse to the Hague Convention. In another, the child returned for contact but then back to the requested State. In another case, the Central Authority never received a full application due to lack of communication from the applicant.

⁵⁵ The outcome is unknown in 18 of the 1259 cases.

The Outcomes by Contracting States which Received the Application

	Overall Outcome per Application									Total
	Rejection	Voluntary Return No Court Orders	Judicial Order for Return by Consent	Judicial Order for Return Not by Consent	Judicial Refusal	Access Agreed or Ordered	Application Pending	Withdrawn	Other	
Argentina	2		2	4			3	2		13
Australia	3	2	10	6	7	3	1	11		43
Austria	1	3		3	3		1			11
Belarus	1	1								2
Belgium	4	3	2	7	3		3	2	1	25
Belize		1		1						2
Bosnia and Herzegovina		1			1		3			5
Burkina Faso		1								1
Canada	4	13	3	8	3		7	12	4	56
Chile		1	2	3	11					17
China - Hong Kong			3	1				1		5
Croatia		1	1						1	3
Czech Republic		3		3	1		2	1	1	11
Cyprus	2			2	2		1	1		8
Denmark	1	1		3	5			1		12
Estonia			1							1
Finland		5		1						6
France	2	11	3	14	4	2	3	1	2	42
Germany	6	12	7	12	7	3	2	22	9	80
Greece		9			2		4	2	1	18
Honduras		1					2			3
Hungary		5	1	3	3				1	13
Iceland		1	1	2	1				1	6
Ireland	3	12	6	4		2		6		33
Israel	1	3	2	1	3			3		13
Italy	6	9	2	12	12			3	1	46
Malta			1		1		1	1		4
Mexico		10	2	5	1		6	3		27
Netherlands	3	2		6		5		7	2	26
New Zealand	1	4	5	7	2			8		27
Norway		2	1				1			4
Panama							3			3
Poland		3		3	8		1	3		18
Portugal		5		7	3		2	1	1	19
Romania	2	1		2	1					6
Slovakia		3			3		1	1		8
Spain	13	26	3	8	18		6	6	7	87
Sri Lanka		1								1
Sweden	1	7	3	1	3			4	3	22
Switzerland	4	18	1	6	1		4	5		39
Thailand	1									1
Turkey		15	1	4	7		6	2		35
UK - England & Wales	9	13	39	34	12	15	4	14	1	141
UK - Nth Ireland			2							2
UK- Scotland		5	1	4			1			11
UK - Isle of Man				1						1
USA	6	53	8	70	29	8	45	57	7	284
Total	76	267	113	248	157	38	113	180	49	1241

The table above shows the outcomes in relation to the Contracting States which received the applications. We have already considered the percentage of applications which

globally end in each different outcome. As in 1999, we would suggest that where (in relation to a particular Contracting State) an outcome appears to be outside of a 10% margin of this global norm, this should give pause for thought. Later in the report we analyse individual Contracting States. Nevertheless, it is worth pointing out some striking differences here.

All 6 applications made to Finland ended in a return (5 voluntarily and one by court order). 10 out of the 11 applications made to Scotland ended in a return (5 voluntarily and 5 by court order). In contrast, only 1 out of 5 applications made to Bosnia and Herzegovina and only 2 out of 8 applications made to Cyprus ended in a return. All 3 applications made to Panama remained "pending". 8 of the 27 (30%) applications made to New Zealand and 57 of the 284 (20%) applications made to the USA were withdrawn.

3. The reasons for rejection⁵⁶

Reason for Rejection by the Central Authority

	Number	Percent
Child over 16	3	4%
Child Located in Another Country	19	24%
Child Not Located	21	27%
Applicant Had No Rights of Custody	15	19%
Other - Article 27	2	3%
Convention not in force at time	6	8%
Other	12	15%
Total	78	100%

The above Table shows the reasons why applications were rejected by the Central Authorities. In addition to the basic figure of 76 rejected applications in 2003, there were 2 cases where there were different outcomes for different children. In the one case the application was rejected for one child who was over the age of 16 years. In relation to the other child the application is pending. Similarly, in second case the application was rejected for one child who was over the age of 16 years. In relation to the other child the application was withdrawn.

The overall number of rejections has fallen considerably from 102 (11%) in 1999 to 76 (6%) in 2003.

Rejected applications may sometimes be the result of inadequacies in the applications themselves. 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. As highlighted in the 1999 report, practices regarding rejections may vary in both requested and requesting Contracting States, depending 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. Whatever the explanation rejection rates vary. Romania rejected 2 out of 6 applications and Cyprus 2 out of 8. Numerically, Spain rejected the most applications, 13 amounting to 15% of all applications received. On the other hand, many States did not reject any application. Notable among these was Mexico which received 27 applications, Portugal, which received 19 applications and Poland, which received 18 applications.

⁵⁶ Information was available in all rejected cases including 2 where there were different outcomes for different children.

The main reason for applications being rejected in 2003 was that the child was not located, 21 cases (27%). In the 1999 it was found to be 26%. The fact that the child has not been located may be evidence of poor location facilities. On the other hand, it may simply show that taking persons are making every effort not to be located. An additional 19, (24%), applications were rejected because the child was located in another country. The fact that applications are made to the wrong State may be due to poor investigation. Some of these cases may have resulted in further applications to the appropriate State.

In 15 cases, 19%, the applicant had no rights of custody. This is a large increase from the figure of 8% in 1999. This ground for rejection may be an example of individual Central Authority practice, as some Contracting States may let such cases go to court to be judicially refused.⁵⁷

In 12 applications (15%) the reason was stated to be in the 'other' category. These reasons were diverse.⁵⁸

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

⁵⁷ For example, in England and Wales such cases tend to be rejected, rather than judicially refused.

⁵⁸ In 2 of the 12 cases the reason for rejection was unclear. The other reasons were stated as follows: issues regarding acquiescence (no response by applicant, file closed); Human Rights issue (case was stayed for care proceedings); application already filed under article 29; application not well founded as applicant initially consented to removal (Ireland); no wrongful removal per article 3; removal within the requesting State (Germany); in 3 cases lack of the habitual residence of the child in the requesting State; and different reasons given for different children in a sibling group (reasons not stated).

Reason for Rejection by the Central Authority

	Overall Reason for Rejection by CA per Application						Total	
	Child over 16	Child Located in Another Country	Child Not Located	Applicant Had No Rights of Custody	Other - Article 27	Convention not in force at time		Other
Argentina		1					1	2
Australia		1		1	1			3
Austria		1						1
Belarus		1						1
Belgium		1	1			2		4
Canada	1	3		1				5
Cyprus			2					2
Denmark						1		1
France			1		1			2
Germany			2	3			1	6
Ireland		1		1			1	3
Israel			1					1
Italy		2	2				2	6
Netherlands	1			2			1	4
New Zealand						1		1
Romania			2					2
Spain		1	8	2			2	13
Sweden			1					1
Switzerland		2		1			1	4
Thailand						1		1
UK - England & Wales		2	1	2		1	3	9
USA	1	3		2				6
Total	3	19	21	15	2	6	12	78

Over half (8 out of 13) the rejections by the Spanish Central Authority was because the child could not be located. Strikingly, these rejections by Spain also amounted to 38% of the global total of applications rejected on this ground. In contrast the second most relied upon ground for rejection, namely, that the child was located in another State was much more evenly spread across Contracting States. This is in contrast to the 1999 survey in which a third of the overall total of rejections on this ground was by England and Wales.

5. The reasons for judicial refusal⁵⁹

The number of judicial refusals rose from 107 in 1999 to 157 in 2003. Proportionally, this represents a rise from 11% to 13% of cases.

⁵⁹ There were 16 applications where the reason for refusal was not stated.

In addition to the basic figure of 157 judicially refused applications in 2003 there were 3 further cases in which different outcomes were reached for different children, return of one child or more being judicially refused. We therefore have data on the reasons for the refusal in 144 of the 160 applications which involved judicial refusals in 2003.

Of those applications for which the reason was known, 111 applications (77%) were refused on the basis that one ground for refusal had been met.⁶⁰

Overall Reason for Judicial Refusal per Application

	Number	Percent
Child Not Habitually Resident in Requesting State	21	15%
Applicant had No Rights of Custody	11	8%
Art 12	17	12%
Art 13a Not Exercising Rights of Custody	4	3%
Article 13 a Consent	7	5%
Art 13a Acquiescence	7	5%
Art 13b	26	18%
Child's Objections	13	9%
More than one reason	33	23%
Other	5	3%
Total	144	~100%

Comparing Sole Reasons for Judicial Refusal 2003 and 1999

Reason for Refusal	2003 Count	2003%	1999 Count	1999%
Child Not Habitually Resident in Requesting State	21	15%	12	12%
Applicant had No Rights of Custody	11	8%	8	8%
Art 12	17	12%	11	11%
Art 13a Not Exercising Rights of Custody	4	3%	3	3%
Article 13 a) Consent	7	5%	4	4%
Article 13 a) Acquiescence	7	5%	4	4%
Article 13 b)	26	18%	21	21%
Child's Objections	13	9%	13	13%
More than one reason	33	23%	17	17%
Other	5	3%	6	6%
Total	144	~100%	99	~100%

Article 13 *b*) (26 cases, 18%) and the fact that the child was not habitually resident (21 cases, 15%) were the two most frequently relied upon sole reasons for a refusal to return in 2003. This can be compared with 21 cases (21%) and 12 cases (12%) respectively in 1999.

The frequent use of article 13 *b*) is again notable considering that general jurisprudence requires extreme justification for the use of this defence.

Article 12 was relied upon in 17 cases (12%), which is a slight increase on 11% found in 1999. In 2003, this reason was cited by the USA in 10 cases.

⁶⁰ In 33 cases there was more than one reason given.

In 9% of cases the child's objections were the sole reason for refusal. This is a decrease on the figure of 13% recorded in 1999. The 13 refusals solely based on this ground involved the objections of 20 children.⁶¹ The ages of the children were as follows, 5 children aged 8 - 10 years old, 6 children aged 11 - 12 years old and 9 children aged 13 years or older. This can be compared with one child under 7 years old, 6 between 8 and 10 years, 8 between 10 and 11 and 6 children over 13 years in 1999.

In 33 cases (23%) more than one reason for refusal was given.

Bases of Multiple Reason for Judicial Refusal

	Number	Percent
Child Not Habitually Resident in Requesting State	6	6%
Applicant had No Rights of Custody	11	12%
Art 12	17	18%
Art 13a Not Exercising Rights of Custody	11	12%
Article 13 a Consent	12	13%
Art 13 a Acquiescence	3	3%
Art 13b	12	13%
Child's Objections	13	14%
Art 20	8	9%
Total	93	100%

The above Table details the reasons for refusal where more than one reason was stated. There were 93 reasons given in the 33 cases involving multiple reasons. In addition to this a combined total of 14 different multiple reasons for refusal were given for a sibling group.

93 reasons is a significant increase compared with the 36 reasons given in the 17 applications in 1999, however a total of 50 of these reasons/grounds can be found in the 11 multiple grounds for refusal cases from Chile.

In 19 cases, 13%, multiple reasons for refusal were given for single children.⁶² In 14 cases, 9%, multiple reasons for refusal were given for sibling groups.⁶³ Only in two cases were different multiple reasons given for each child in a sibling group.⁶⁴

Accounting for 20% of the total, article 13 *b*) was the reason cited most often. This is in line with the analysis of single reasons given in applications, above.⁶⁵ It is however far higher than that recorded in 1999 where article 13 *b*) was cited in only 5 of the 36 cases (14%). The more frequently cited reasons in 1999 included, article 13 *a*) Consent (22%) and Child's Objections (22%).

⁶¹ In one case involving 6 children, the views of 2 of them were taken into account.

⁶² 6 of these cases were from Chile and involved up to 6 different multiple reasons for judicial refusal (two applications involved 6 reasons, one application involved 4 reasons, two applications cited three reasons and the final application cited 2 reasons - please see the country report). The other 6 cases involving multiple reasons were from various countries.

⁶³ 4 of the 5 cases were from Chile, where up to 5 multiple reasons were cited for sibling groups (one case involved 5 reasons, one involved 4, and two applications involved 2 reasons - please see the country report).

⁶⁴ This case was also from Chile, and involved four children. Article 13 *a*) Consent, article 13 *b*) and article 20 were cited for all four children. Child's Objections was cited as an additional reason in relation to only two of the children (aged 11 and 8).

⁶⁵ See table above 'Overall Reason for Judicial Refusal per Application'. Article 13 *b*) represented 21% of the overall number of cases.

It is notable that article 20 was not relied upon at all according to the 1999 survey, nor was it a sole reason for refusal in 2003. It was however relied upon in 8 cases (9%) in which multiple reasons for refusal were relied upon. All 8 occasions on which this ground for refusal was relied upon involved children in applications to Chile.⁶⁶

Reasons for Judicial Refusal Combined

	Number	Percent
Child Not Habitually Resident in Requesting State	27	13%
Applicant had No Rights of Custody	22	11%
Article 12	34	17%
Art 13a Not Exercising Rights of Custody	15	7%
Article 13a Consent	19	9%
Article 13a Acquiescence	10	5%
Article 13b	38	19%
Child's Objections	26	13%
Article 20	8	4%
Other	5	2%
Total	204	~100%

As the above Table shows, when all the reasons are analysed it can be seen the exception most frequently relied upon when refusing a return is article 13 *b*). Nearly a fifth (19%) of all refusals were either solely or partially based on this exception. Not far behind is the reliance on article 12 upon which 17% of refusals were either solely or partially based. 13% of refusals were either solely or partially based on the child's objections and the same proportion (13%) of refusals was based in whole or in part on the ground of the child's lack of habitual residence in the Requesting State. A not insignificant proportion of refusals, 11% and 7% were respectively based in whole or in part upon the applicant's lack of custody rights and the non exercise of these rights by the applicant.

Comparing Reasons for Judicial Refusal Combined 2003 and 1999

Reason for Refusal	2003 Count	2003%	1999 Count	1999%
Child Not Habitually Resident in Requesting State	27	13%	17	14%
Applicant had No Rights of Custody	22	11%	13	11%
Article 12	34	17%	13	11%
Article 13 <i>a</i>) Not Exercising Rights of Custody	15	7%	4	3%
Article 13 <i>a</i>) Consent	19	9%	12	10%
Article 13 <i>a</i>) Acquiescence	10	5%	6	5%
Article 13 <i>b</i>)	38	19%	26	22%
Child's Objections	26	13%	21	18%
Article 20	8	4%	0	0%
Other	5	2%	6	5%
Total	204	~ 100%	118	~ 100%

The above Table compares the findings of the 2003 and the 1999 surveys. As can be seen, in both surveys article 13 *b*) was most frequently relied upon either wholly or in

⁶⁶ A total of 7 applications.

part. However, there was less frequent reliance on the child's objections according to the 2003 survey compared with 1999. Conversely, more reliance was placed on article 12.

6. The reasons for judicial refusal and the relationship of the taking person⁶⁷

Reason for Judicial Refusal and the Relationship of Taking Person to Child

	Relationship of Taking Person to Child				Total
	Mother	Father	Both Grandparents	Other Relative	
Child Not Habitually Resident in Requesting State	15	6	0	0	21
Applicant had No Rights of Custody	10	1	0	0	11
Art 12	14	3	0	0	17
Art 13a Not Exercising Rights of Custody	4	0	0	0	4
Article 13 a Consent	5	2	0	0	7
Art 13a Acquiescence	7	0	0	0	7
Art 13b	17	8	1	0	26
Child's Objections	4	9	0	0	13
More than one reason	28	4	1	0	33
Other	3	1	0	1	5
Total	107	34	2	1	144

The above Table analyses refusals according to the relationship of the taking person to the child. As can be seen, of the applications in which the reasons for judicial refusal were known, 34 applications were refused where the taking person was the father (24%) and 107 applications were refused where the taking person was the mother (74%).⁶⁸ A further 3 applications involved both grandparents (1%) and one an 'other relative' (<1%).

Overall, 9% of applications where the taking person was the father and 14% where the taking person was the mother, ended in a judicial refusal.⁶⁹ This can be compared with the lower figures of 7% and 11% respectively, recorded in 1999.⁷⁰

65% of the applications in which article 13 *b*) was successfully invoked involved mothers. This is a dramatic decrease on the 'female' figure of 90% in 1999. Even so, proportionally, in cases where a return order was refused fathers more frequently successfully invoked article 13 *b*) than mothers, 24% as against 16%. This was even more dramatically so in the case of child's objections where the respective proportions were 27% and 4%. On the other hand, mothers seemed more successful in establishing the child's lack of habitual residence in the requesting State, that the applicant had no rights of custody or had consented or acquiesced. They were also significantly more successful in relying on article 12.

Surprisingly, 10 of the 11 applications in which the taking person was found to have no rights of custody involved mothers.

7. The reasons for judicial refusal and the Contracting States which received the application⁷¹

⁶⁷ This information was available in all of the 144 applications for which the reason for refusal was known.

⁶⁸ In addition to this there were 13 refusals for which the reason was unknown and the taking person was the mother.

⁶⁹ 34 of the 358 applications involving fathers as taking persons and 120 of the 835 applications involving mothers as taking persons (for which the outcomes were known).

⁷⁰ Once again, this can only be compared insofar as male is assumed to mean father and female is assumed to mean mother. See n.9.

Reason for Refusal and the Contracting States

	Overall Reason for Judicial Refusal per Application									Total	
	Child Not Habitually Resident in Requesting State	Applicant had No Rights of Custody	Art 12	Art 13a Not Exercising Rights of Custody	Article 13 a Consent	Art 13a Acquiescence	Art 13b	Child's Objections	More than one reason		Other
Australia	1		1			3	2				7
Austria	1							1			2
Belgium		1					1				2
Canada			1				1	1			3
Chile									11		11
Czech Republic							1				1
Cyprus						1					1
Denmark		1	2				1	1	1		6
France	1	2					1				4
Germany	1			1	1		2		1	1	7
Greece	1	1									2
Hungary							1		2		3
Iceland		1									1
Israel					1	1			1		3
Italy	2	1		2	1		4	1			11
Malta							1				1
Mexico									1		1
New Zealand		1									1
Poland	2						2		2		6
Portugal							1		1		2
Slovakia	1			1			1				3
Spain		1	2		2			3	10		18
Sweden	1	1	1								3
Switzerland	1										1
Turkey							3				3
UK - England & Wales	2	1			1	2		2	1	2	11
USA	7		10		1		4	4	2	2	30
Total	21	11	17	4	7	7	26	13	33	5	144

As emphasised in the 1999 report, a high refusal rate does not necessarily indicate a misapplication of the Convention as refusals are permitted. Nevertheless, when a particular State has a high judicial refusal rate this at least gives pause for thought.

⁷¹ This information was available in all of the 144 applications for which the reason for refusal was known.

The USA made the most judicial refusals in total, but at 10%, the proportion was below the global average of 13%. Spain, on the other hand, refused the second highest number of applications and, at 21%, was much higher than the global average. Unlike in 1999, proportionally, Austria did not have particularly high refusal rate according to this survey.⁷² Chile, on the other hand, had the highest refusal rate with 11 of 17 (65%) applications that it received refused on multiple grounds, compared with 3 refused out of 7 (43%) applications in 1999. Italy also refused far more cases in 2003, 12 out of 46 (26%) compared with 7 out of 41 (17%) in 1999. Austria and Chile in particular demonstrate how, with regard to Contracting States with small numbers of applications, a report such as this can only provide a snapshot of any one year. The results may be by no means typical of other years.

The global chart above shows that the reasons for refusal were generally diverse. However, all 3 of the refusals in Turkey were based on article 13 *b*). In contrast, unlike the snapshot of applications in the 1999 report, refusals in Sweden were based on diverse exceptions.⁷³

Multiple Reasons for Refusal and the Contracting States

	Child Not Habitually Resident in Requesting State	Applicant had No Rights of Custody	Art 12	Art 13a Not Exercising Rights of Custody	Article 13 a Consent	Art 13 a Acquiescence	Art 13b	Child's Objections	Art 20	Total
Canada								1		1
Chile	1	4	7	5	5	2	6	2	8	40
Denmark							1	1		2
Germany	1	1								2
Hungary		1					1	2		4
Israel	1	1								2
Mexico							1	1		2
Poland	1	1	1				1			4
Portugal				1			1			2
Spain	1	3	8	5	5			6		28
UK - England & Wales	1					1				2
USA			1		2		1			4
Total	6	11	17	11	12	3	12	13	8	93

The above Table analyses refusals by State when based upon multiple reasons. What is striking about these findings is the frequency of reliance upon multiple grounds by Chile

⁷² In 1999 they refused 7 out of 9 applications, whereas in 2003 they only refused 2 out of 12.

⁷³ The 1999 report commented on the fact that all four of the Swedish cases were refusals based on article 13 *b*). In 2003 none of the three cases were based on that ground.

(where all 11 of their refusals were based on multiple grounds) and Spain (where 10 of the 18 refusals were based on multiple grounds) and the relative paucity of such reliance in other Contracting States.

Reasons for Refusals Combined and the Contracting States

	Child Not Habitually Resident in Requesting State	Applicant Had No Rights of Custody	Article 12	Art 13a Not Exercising Rights of Custody	Art 13a Consent	Art 13a Acquiescence	Article 13b	Child's Objections	Article 20	Other	Total
Australia	1		1			3	2				7
Austria	1							1			2
Belgium		1									1
Canada			1				1	2			4
Chile	1	4	7	5	5	2	6	2	8		40
Cyprus						1					1
Czech Republic							1				1
Denmark		1	2				2	2			7
France	1	2					1				4
Germany	2	1		1	1		2			1	8
Greece	1	1									2
Hungary		1					2	2			5
Iceland		1									1
Israel	1	1			1	1					4
Italy	2	1		2	1		4	1			11
Malta							1				1
Mexico							1	1			2
New Zealand		1									1
Poland	3	1	1				3				8
Portugal				1			2				3
Romania							1				1
Slovakia	1			1			1				3
Spain	1	4	10	5	7			9			36
Sweden	1	1	1								3
Switzerland	1										1
Turkey							3				3
UK - England & Wales	3	1			1	3		2		2	12
USA	7		11		3		5	4		2	32
Total	27	22	34	15	19	10	38	26	8	5	204

The above Table analyses all the reasons for refusal both sole and partial by individual State. From this it can be seen that article 12 is most frequently relied upon by the USA

and Spain and to a lesser extent Chile. Children's objections are also most frequently relied upon by Spain. Article 13 *b*) is most frequently relied upon by Chile and Chile is the only State to rely, at least in part, on article 20.

8. Withdrawn applications

The proportion of withdrawn applications in 2003 was relatively high, at 15%, marginally higher than the 14% found in 1999.

There are many reasons why an application may be withdrawn, including the fact that access may be agreed instead. In the 2003 survey, we have therefore tried to record these cases separately. Overall, 12 cases were recorded where the application was withdrawn because access was agreed,⁷⁴ and a further 4 were withdrawn following an access order being made.

The reasons for withdrawal were often not stated, but where known, they were diverse. As was found in 1999, the main reasons appeared to be that the applicant stopped contact with their lawyer or the Central Authority or some kind of private agreement was commonly reached. In addition to this it was found that some applicants withdrew their application after early advice regarding the strength of their case, or lack of it.

Some applications therefore may be withdrawn for positive reasons (where some conclusion, such as access is agreed) while other applicants may withdraw for negative reasons, for example, in some cases applicants appear to just give up pursuing the application for one reason or another. This may perhaps be to do with the system itself.

9. Return applications where access was agreed

With the additional detailed information asked for in the 2003 survey we are now able to provide a new analysis of return applications that end in access being agreed or ordered. This is an important outcome and is therefore worthy of individual comment especially as it often said that some return applications are really access applications in disguise.

Globally, 38 applications for return ended in access being agreed or ordered. This accounts for 3% of total global outcomes. This finding, however, masks differences between Contracting States. In the Netherlands, for example, 5 (19%) of the 26 applications ended in access being agreed or ordered. 15 (11%) of the 141 applications made to England and Wales had a similar outcome.

Return Applications Resulting in Access

	Number	Percent
Order for Access Judicially Granted	7	18%
Dismissed - Consent Orders for Access Made	15	39%
Withdrawn - Consent Order for Access Made	4	11%
Withdrawn - Access Agreed No Orders	12	32%
Total	38	100%

As the above Table shows, there is a variety of ways in which return applications end with access as its outcome. As already mentioned, in 12 cases the application was withdrawn following a voluntary agreement over access, with a further 4 being withdrawn following the making of an access order. In 15 cases the return application was 'dismissed' by the court as access orders were made. 14 of these cases were from

⁷⁴ See section D9 below.

England and Wales and the remaining one was from the Netherlands. In 7 cases it was simply recorded that access was judicially granted. Two of these cases were from Ireland; another two cases were from the USA, and one case each was from France, the Netherlands and England and Wales.

E. SPEED

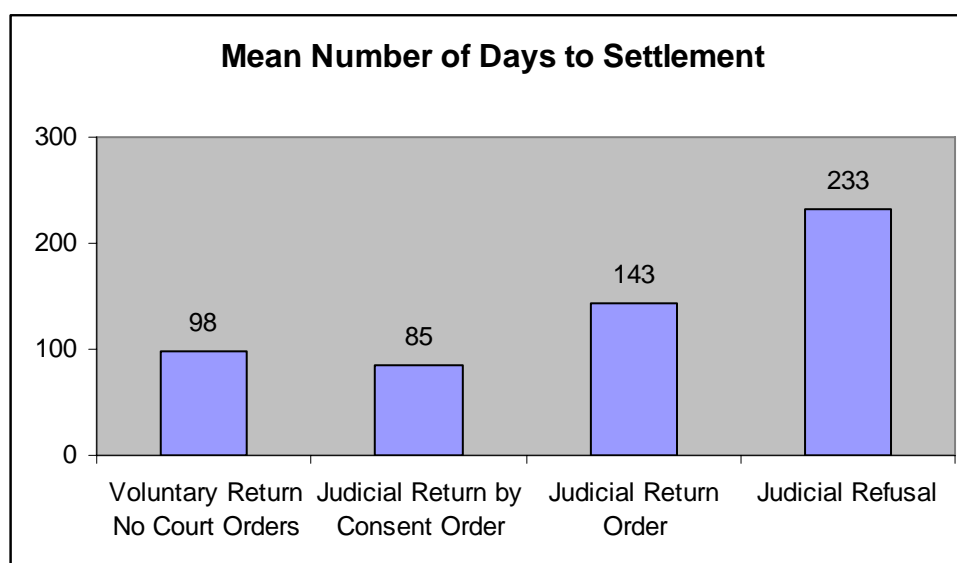
Speed is always a key issue when considering the successful working of the Convention. Indeed article 11(2) of the Convention implies a six week period in which applications should be resolved. Although this is strictly not a Convention *obligation*, for Member States of the European Union (except Denmark) as from 1 March 2005 (and therefore outside this survey) there has been an attempt to impose a six week obligation by article 11(3) of the Council Regulation (EC) No 2201/2003 of 27 November 2003,⁷⁵ otherwise known as the revised Brussels II Regulation.

As in 1999, the following section compares the time taken to resolve voluntary return applications as well as judicial returns and refusals. We have omitted rejections, withdrawals, other outcomes and pending cases from this analysis for a variety of reasons. We have no information regarding timings in relation to rejected applications, our information regarding outcomes categorised as 'other' is imperfect, and withdrawn applications are omitted as they cover a wide variety of possible reasons for withdrawal, timing being relevant only in some cases.

In addition to this, we are now able to provide some analysis of information regarding timing in relation to return applications which conclude with access being agreed or ordered. We have also been able to provide additional information on cases in which the child was voluntarily returned but no formal agreement was reached.

In the 2003 survey, judicial returns have been further divided into those made with consent and those made without. This in itself leads to some interesting analysis (see below) but for the most part of this section of the report, the two are considered together as a 'combined' outcome in order that they are comparable with the 1999 analysis.

1. The time between application and outcome⁷⁶



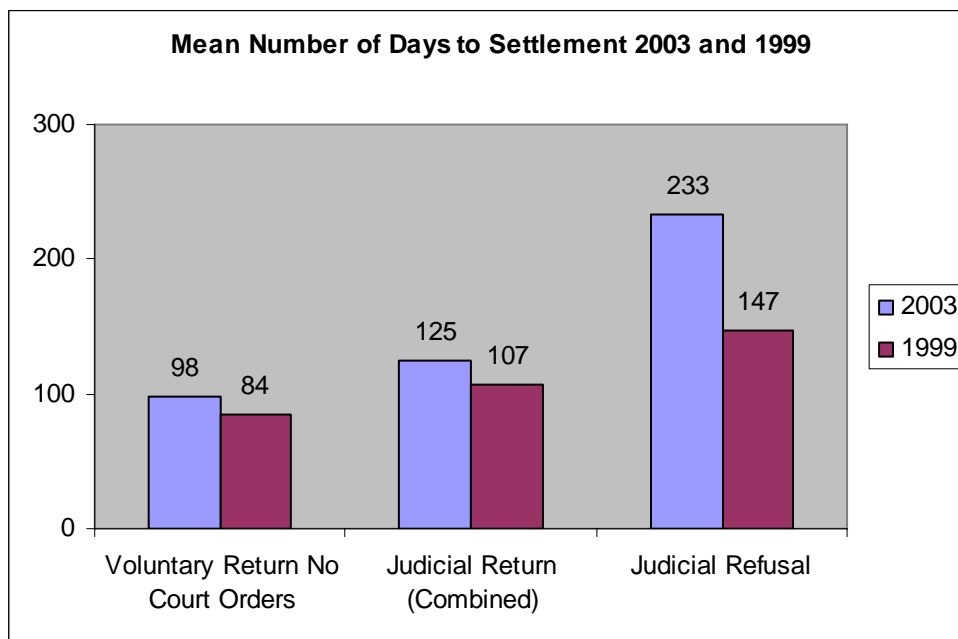
The above chart shows the mean number of days taken to reach the final outcome.

⁷⁵ Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility, repealing Regulation (EC) No 1347/2000.

⁷⁶ This information was not available in 149 of the 779 relevant cases.

These mean averages therefore include those cases where orders have been made on appeal.⁷⁷

Not surprisingly, return orders made with consent were resolved more quickly than those made without consent and judicial refusals took the longest to resolve. More surprisingly, however, is that return orders made with consent were resolved quicker than voluntary returns.



The 'Combined Judicial Return' category comprises both judicial returns made by consent order and judicial return orders made without consent. Without this, it is hard to make comparisons with the 1999 statistics regarding the mean number of days taken to resolve an application in relation to voluntary return and judicial return orders.⁷⁸

Based on this assumption, the chart above indicates that the mean average number of days in relation to voluntary returns increased from 84 days in 1999 to 98 days in 2003. The mean number of days to a judicial return was 125 days in 2003, using the combined average. This is also an increase on the 1999 figure of 107 days. The number of days to judicial refusal has increased from an average of 147 days in 1999 to 233 days in 2003.⁷⁹ In summary, overall disposal times were slower in 2003 than in 1999.

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

⁷⁷ For separate analysis of the timing of unappealed and appealed judicial decisions, see further below at pp. 44 and 51 respectively.

⁷⁸ This is because in 1999 information was not requested on whether the return order was made by consent order or not. Practice may have differed amongst Contracting States as to whether they recorded consent orders as 'Judicial Returns' in 1999 or whether they recorded them as 'Voluntary Returns'. However, Contracting States with highest caseloads (including US, England & Wales & Australia) have all confirmed that in 1999 they put judicial returns by consent order as being 'Judicial Returns' for the purposes of the survey. This is why we have provided the 'Combined Judicial Return' category as a means of comparison.

⁷⁹ All figures are based on the 'final' decision, therefore they include appeals.

Number of Days Taken to Reach Final Outcome: 2003 ⁸⁰
(including appealed cases)

	Voluntary Return No Court Orders	Judicial Return by Consent Order	Judicial Return Order	Judicial Refusal
Mean	98	85	143	233
Median	58	65	118	195
Minimum	0	1	0	0
Maximum	543	825	565	700
Number of cases	140	107	233	150

These results can be compared with those found in 1999, below.

	Voluntary Return No Court Orders		Combined Judicial Return		Judicial Refusal	
	2003	1999	2003	1999	2003	1999
Mean	98	84	125	107	233	147
Median	58	44	88	73	195	135
Minimum	0	0	0	1	0	5
Maximum	543	431	825	718	700	606
Number of cases	140	139	340	280	150	100

As in 1999, the above Tables show that cases can be resolved very quickly. Indeed, in relation to all three of the main categories of outcome, one or more applications were decided the day that the application was filed. Indeed, in some cases a conclusion was reached before the application had even been filed.⁸¹

On the other hand, some cases were concluded extremely slowly, with the slowest judicial return taking 825 days (well over two years). It is notable that this case was eventually resolved via an order with consent. 825 days is an increase on the maximum number of days (718) recorded in 1999. The maximum number of days taken for a judicial refusal has also increased, from 606 days in 1999 to 700 days in 2003. But it should also be remembered that some cases were still pending as at the end of June 2005. It must be questionable whether a return is indeed the best solution after such a length of time. It is, however, inevitable that some cases will take longer due to their varying complexity.

There were of course differences found between Contracting States. The mean time for a Voluntary Returns varied. For example, in England and Wales 12 applications were voluntarily resolved in a mean time of 24 days. In contrast, in Mexico, the mean time for voluntary resolutions was 326 days (6 applications).

⁸⁰ This information was not available in 123 Voluntary Return cases; 6 Judicial Return by Consent cases; 15 Judicial Return cases; 5 Judicial Refusal cases; and 21 of the Combined Judicial Return cases figure.

⁸¹ For example, it is discovered after receiving the application that the child has in fact been returned. These cases have been excluded from the time analysis.

Judicial Returns from England and Wales were notably quick, 52 days (22 applications). In contrast, the mean disposal time for returns from Spain was 253 days (11 applications).

With regard to Judicial Refusals, the mean time in England and Wales was 96 days (12 applications). In contrast, the mean time in Turkey was 398 days (7 applications) and in Spain 346 days (17 applications).

Information regarding timing of return applications which resulted in access being ordered or agreed was available in 30 of the 38 applications. These applications were concluded in a mean average of 188 days.

We have also been able to undertake a small analysis of cases which resulted in a voluntary return, but no formal agreement was reached. Information was available in 138 such applications. On average, in these applications took 98 days for the child to be returned.

**Number of Days Taken to Reach Final Outcome: 2003
(excluding appealed cases)**

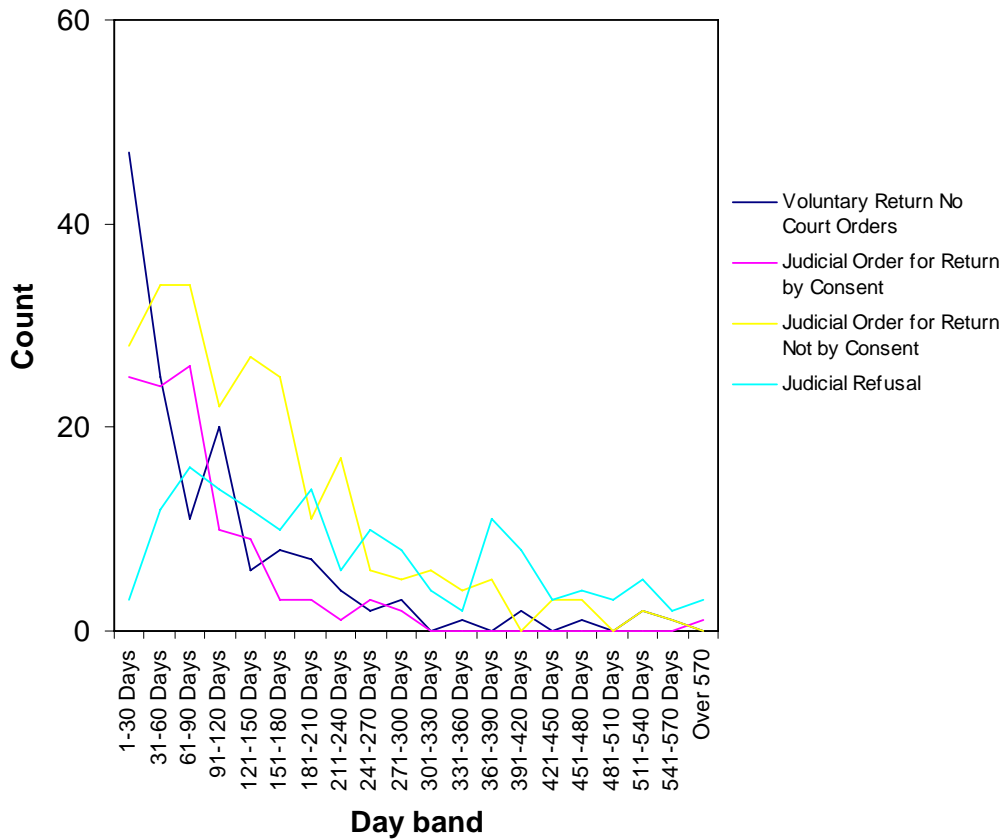
	Judicial Return Order	Judicial Refusal
Mean	123	197
Median	94	160
Minimum	0	0
Maximum	565	552
Number of cases	177	95

The above Table analyses the time of judicial decisions that were not appealed from which it can be seen that return orders on average took 123 days and refusals 197 days which is quicker than 143 and 223 days respectively when appeals are included.⁸² Even so, some unappealed cases took a long time to reach a decision. One judicial return order took 565 days to resolve and one judicial refusal 532 days to reach its conclusion.

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

⁸² For the timing of appealed cases, see Section F below.

Number of Days per Outcome

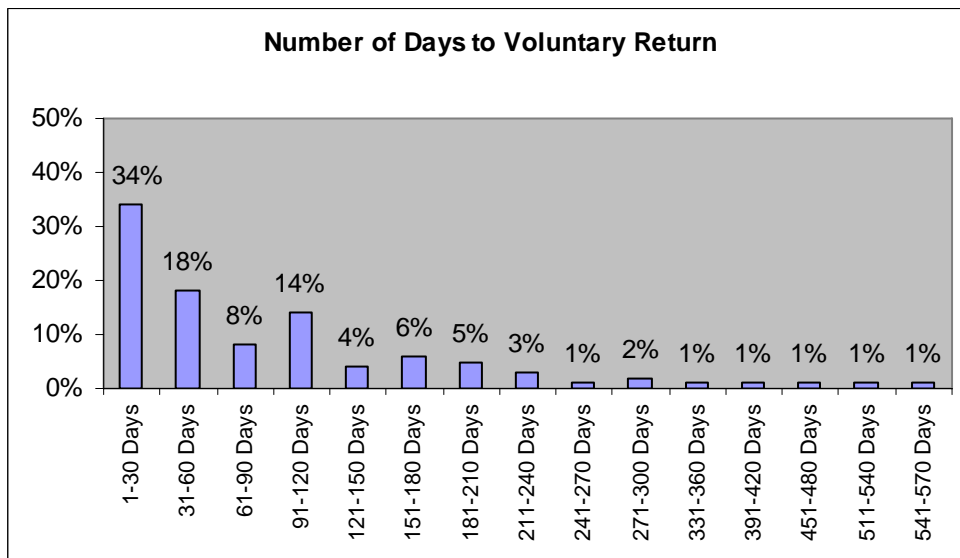


As was found in 1999, each of the outcomes peaks early and then begins to flatten out. This pattern is slightly different in relation to judicial refusals where there seem to be a series of successive peaks and troughs.

In 2003 there were 7 voluntary returns, one judicial return with consent, 24 judicial returns without consent and 45 judicial refusals taking longer than 300 days. This is different to the pattern found in 1999 with eight voluntary returns, 12 judicial returns and only six judicial refusals taking longer than 300 days. These outcomes tend to support the fact that legal complexity can lengthen a case regardless of what the final outcome may be. This inevitably will vary year on year.

Number of Days to Voluntary Return

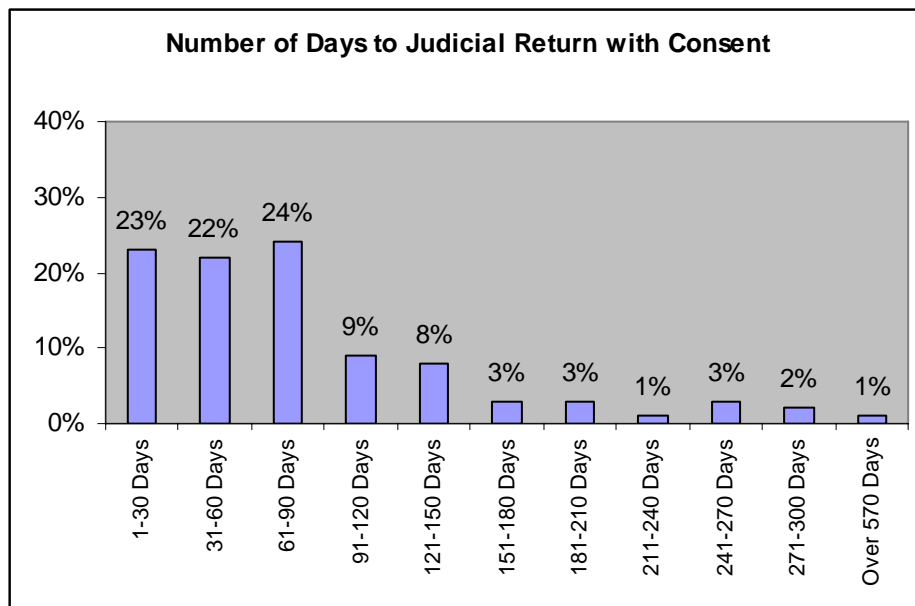
	Number	Percent
1-30 days	47	34%
31-60 days	25	18%
61-90 days	11	8%
91-120 days	20	14%
121-150 days	6	4%
151-180 days	8	6%
181-210 days	7	5%
211-240 days	4	3%
241-270 days	2	1%
271-300 days	3	2%
331-360 days	1	1%
391-420 days	2	1%
451-480 days	1	1%
511-540 days	2	1%
541-570 days	1	1%
Total	140	100%



Not surprisingly, most voluntary returns were settled quickly with 60% being concluded in less than 90 days, though, this is proportionally below the 67% recorded in 1999. Similarly, the 34% of voluntary returns that were settled within 30 days is below the 42% recorded in 1999.

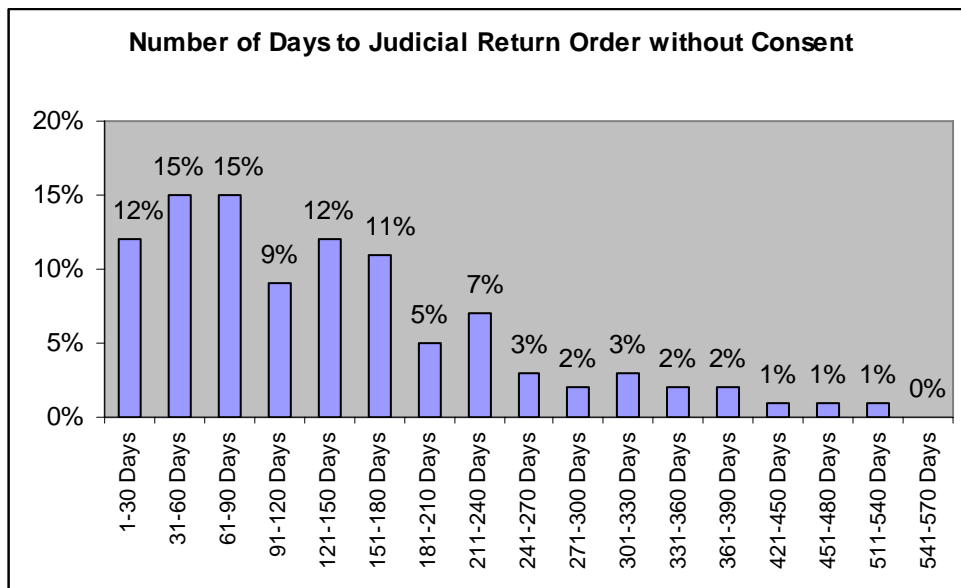
Number of Days to Judicial Return with Consent

	Number	Percent
1-30 days	25	23%
31-60 days	24	22%
61-90 days	26	24%
91-120 days	10	9%
121-150 days	9	8%
151-180 days	3	3%
181-210 days	3	3%
211-240 days	1	1%
241-270 days	3	3%
271-300 days	2	2%
Over 570 days	1	1%
Total	107	~100%



Number of Days to Judicial Return without Consent

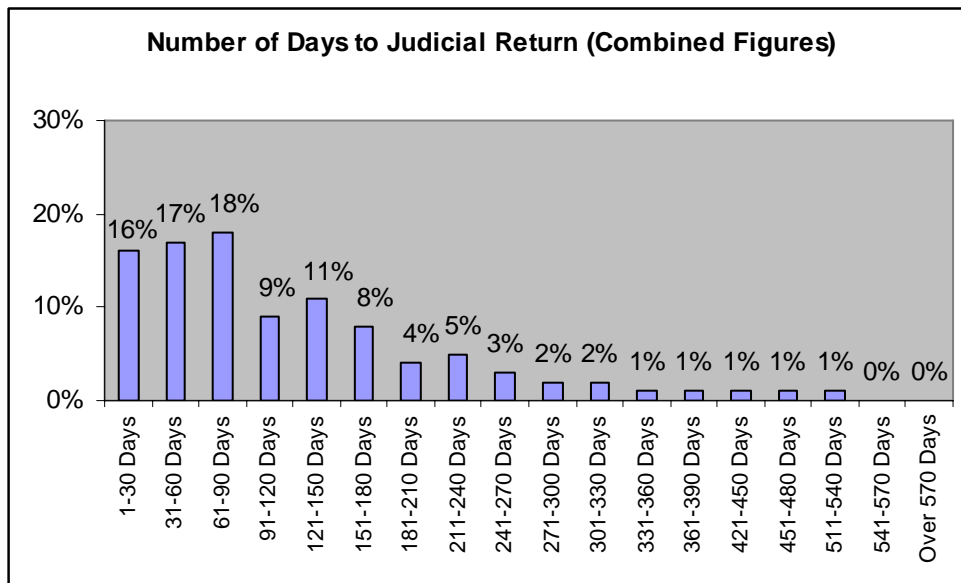
	Number	Percent
1-30 days	28	12%
31-60 days	34	15%
61-90 days	34	15%
91-120 days	22	9%
121-150 days	27	12%
151-180 days	25	11%
181-210 days	11	5%
211-240 days	17	7%
241-270 days	6	3%
271-300 days	5	2%
301-330 days	6	3%
331-360 days	4	2%
361-390 days	5	2%
421-450 days	3	1%
451-480 days	3	1%
511-540 days	2	1%
541-570 days	1	<1%
Total	233	~100%



In the charts above, differences can be seen between judicial returns with and without consent. Not surprisingly, return orders by consent were generally made quicker than those without. Over 69% of judicial returns with consent were concluded within 90 days, compared with 42% of judicial return orders without consent. It may also be noted that the disposal times of return orders without consent are generally more diverse than for orders with consent. Even so, although judicial returns by consent tended to be settled earlier, one case took over 570 days.

Number of Days to Judicial Return (Combined figures)

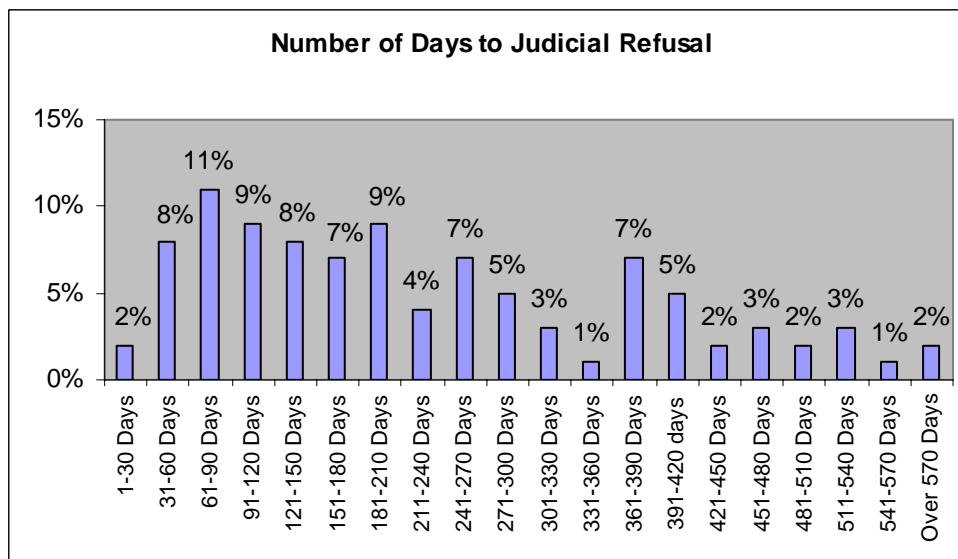
	Number	Percent
1-30 days	53	16%
31-60 days	58	17%
61-90 days	60	18%
91-120 days	32	9%
121-150 days	36	11%
151-180 days	28	8%
181-210 days	14	4%
211-240 days	18	5%
241-270 days	9	3%
271-300 days	7	2%
301-330 days	6	2%
331-360 days	4	1%
361-390 days	5	1%
421-450 days	3	1%
451-480 days	3	1%
511-540 days	2	1%
541-570 days	1	<1%
Over 570 days	1	<1%
Total	340	~100%



Combining the timing of judicial orders made with or without consent allow a direct comparison to be made with the 1999 survey. For example, whereas in 2003 51% were concluded within 90 days, this was less than the 59% recorded in 1999. 16% of judicial returns were concluded within 30 days. As in 1999, unlike voluntary returns, judicial return orders peak between 61 and 90 days (18%).

Number of Days to Judicial Refusal

	Number	Percent
1-30 days	3	2%
31-60 days	12	8%
61-90 days	16	11%
91-120 days	14	9%
121-150 days	12	8%
151-180 days	10	7%
181-210 days	14	9%
211-240 days	6	4%
241-270 days	10	7%
271-300 days	8	5%
301-330 days	4	3%
331-360 days	2	1%
361-390 days	11	7%
391-420 days	8	5%
421-450 days	3	2%
451-480 days	4	3%
481-510 days	3	2%
511-540 days	5	3%
541-570 days	2	1%
Over 570 days	3	2%
Total	150	~100%

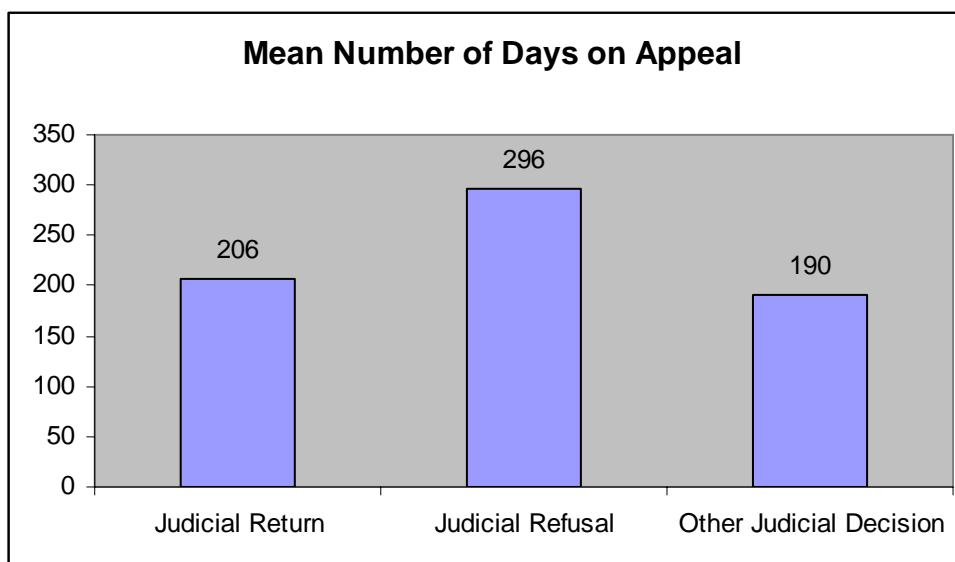


As was found in 1999, few judicial refusals were made within 30 days 3 cases (2%) in 2003 compared with 4 cases (5%) in 1999) and only 21% were concluded in less than 90 days. 52% of cases were concluded between 31 and 210 days, compared with 80% in 1999. In other words judicial refusals took generally longer to conclude in 2003 than in 1999.

F. APPEALS

Altogether 118 cases were concluded after an appeal. This amounts to 9% of all the cases analysed,⁸³ and 22% of all cases which went to court.⁸⁴ These results compare 6% and 14% respectively, recorded in 1999. In other words more judicial decisions were appealed in 2003 than in 1999. Appeal 'rates' varied. For example in Denmark 7 out of the 8 court decisions (88%) were appealed. Conversely, in England and Wales only 3 of the 99 court decisions (3%) were appealed.

Of these appeals, 60 (51%) resulted in judicial return, 55 (47%) ended in judicial refusal and 3 applications (3%) ended in some 'other' judicial decision.⁸⁵ This is similar to the 32 (54%) judicial returns and 27 (46%) judicial refusals at appellate level in 1999.



We have data on the time taken to reach the final settlement in 114 of the 118 cases which ended on appeal. The mean number of days to conclude return applications was 206 days,⁸⁶ compared with 208 days in 1999. The mean number of days in relation to judicial refusals was 296 days, compared with 176 days in 1999. The 'other' cases took a mean average of 190 days to reach final conclusion. Contrary to the figures recorded in 1999, on average judicial refusals took longer than judicial returns on appeal.

It must be noted that some cases were still pending appeal as at 30th June 2005.

With regard to whether decisions at appellate level upheld or overruled first instance decisions, we have information on all 118. The judicial decisions both at first instance and on appeal are shown in the Table below.

Appeals

	Appellate Final Judicial Decision			Total
	Return	Refusal	Other	
Return	50	10	2	62
Refusal	10	45	0	55
Consent Return	0	0	1	1
Total	60	55	3	118

⁸³ This is 118 of the 1228 applications for which the outcome was known.

⁸⁴ 118 of the 388 that went to court (this is again from the 1228 applications where the outcome was known).

⁸⁵ The other decisions on appeal are as follows: in one case a return order was discharged by the appellate court because of enforcement issues; in a second case, after a judicial refusal at first instance, consent order for access was made at the second instance; in a third case there was some form of 'judicial settlement' at appellate level, following a judicial return order at first instance.

⁸⁶ Information was missing in relation to 3 cases.

The above table shows that, as in 1999, the majority of decisions on appeal upheld first instance decisions. In fact, 95 of the 118 appeal decisions (81%), upheld first instance decisions, compared with 72% in 1999. Of the remaining 23 decisions, 10 applications were judicial returns at first instance that were refused on appeal (compared with 6 cases in 1999) and another 10 were refused at first instance but ended in a return order (compared with 7 cases in 1999). The remaining 3 cases were either return or consent return orders that resulted in an 'other' decision on appeal.⁸⁷

III A GLOBAL VIEW OF INCOMING ACCESS APPLICATIONS

A. THE APPLICATIONS

1. The number of applications

In this section we analyse the **238** incoming access applications received by **27** Contracting States in 2003. These applications were made by a total of 39 different States, but including one country (Lebanon) that was not party to the Convention.

These figures can be compared with the 1999 survey which analysed 197 incoming access applications received by 25 different States. In 1999 these applications were made by 32 different States.

In relation to the number of return applications, the proportion of access applications was 16% to 84%, compared with the overall ratio of 17% to 83% access to return applications in 1999.

2. The Contracting States involved

⁸⁷ In 1999 the only 'other' case was an 'other decision at first instance that ended in a judicial return order on appeal.

Contracting State That Received the Application 2003

	Number	Percent
USA	59	25%
Australia	19	8%
Spain	19	8%
Germany	18	8%
UK - England & Wales	17	7%
France	13	5%
Austria	11	5%
Canada	11	5%
Switzerland	11	5%
Poland	8	3%
Argentina	6	3%
Netherlands	6	3%
New Zealand	6	3%
Sweden	5	2%
Chile	4	2%
Denmark	4	2%
Italy	3	1%
Portugal	3	1%
South Africa	3	1%
Belgium	2	1%
Finland	2	1%
Ireland	2	1%
Israel	2	1%
Cyprus	1	<1%
Greece	1	<1%
Hungary	1	<1%
Slovakia	1	<1%
Total	238	~100%

As in 1999 there were significantly more applications received by the USA (25% of the global total) than any other Contracting State. Relatively high numbers of applications were received by Australia, Spain, Germany, England and Wales. This does not exactly match the findings of the 1999 survey, with Spain receiving significantly more applications and Germany and England and Wales receiving less than in 1999.

Contracting States That Received No Access Applications 2003

Bahamas
Belarus
Belize
Bosnia and Herzegovina
Bulgaria
Burkina Faso
Canada - Manitoba
Canada - New Brunswick
Canada - Northwest Territories
Canada - Nova Scotia
Canada - Nunavut

Canada - Prince Edward Islands
Canada - Quebec
Canada - Yukon Territory
China - Hong Kong
China - Macau
Croatia
Czech Republic
El Salvador
Estonia
Fiji
Georgia
Guatemala
Honduras
Iceland
Latvia
Lithuania
Luxembourg
Malta
Mexico
Monaco
Nicaragua
Norway
Panama
Romania
Slovenia
Sri Lanka
Thailand
Turkey
UK - Bermuda
UK - Falkland Islands
UK - Isle of Man
UK - Montserrat
UK - Northern Ireland
UK - Scotland
Uzbekistan

As the above Table shows a majority, 33 out of 58 of responding States,⁸⁸ received no access applications in 2003.

⁸⁸ The territories of the United Kingdom are separately analysed because of the vast amount of cases handled by England & Wales.

Contracting State That Made the Application 2003

	Number	Percent
UK - England & Wales	36	15%
Germany	19	8%
France	15	6%
Italy	15	6%
Australia	11	5%
Spain	10	4%
USA	10	4%
Argentina	9	4%
Netherlands	9	4%
New Zealand	9	4%
Switzerland	9	4%
Denmark	8	3%
Canada	6	3%
Mexico	6	3%
Slovakia	6	3%
South Africa	6	3%
Belgium	4	2%
Finland	4	2%
Hungary	4	2%
Israel	4	2%
Portugal	4	2%
Sweden	4	2%
Chile	3	1%
Colombia	3	1%
Greece	3	1%
Norway	3	1%
Venezuala	3	1%
Estonia	2	1%
Panama	2	1%
Poland	2	1%
Czech Republic	1	<1%
Cyprus	1	<1%
Ecuador	1	<1%
Ireland	1	<1%
Mauritius	1	<1%
Romania	1	<1%
Serbia & Montenegro	1	<1%
Turkey	1	<1%
Non-Convention Country	1	<1%
Total	238	~100%

Although none of the new Contracting States since 1999 (on which we have information) received access applications, it is interesting to note that Slovakia made 6 applications and Estonia and Turkey each made one application. The USA made remarkably few access applications, 10, compared with 168 return applications. England and Wales made the most applications (36) nearly double that of Germany (19). This is different from the 1999 survey where most applications were made by the USA closely followed by England and Wales and Italy.

Requested States compared with 1999 figures

Country	2003 Count	2003%	1999 Count	1999%
USA	59	25%	44	21%
Australia	19	8%	14	7%
Spain	19	8%	6	3%
Germany	18	8%	24	12%
UK - England & Wales	17	7%	25	12%
France	13	5%	15	7%
Austria	11	5%	8	4%
Canada ⁸⁹	11	5%	8	4%
Switzerland	11	5%	5	2%
Poland	8	3%	NR	NR
Argentina	6	3%	6	3%
Netherlands	6	3%	8	4%
New Zealand	6	3%	4	2%
Sweden	5	2%	2	1%
Chile	4	2%	4	2%
Denmark	4	2%	2	1%
Italy	3	1%	4	2%
Portugal	3	1%	4	2%
South Africa	3	1%	0	NR
Belgium ⁹⁰	2	1%	0	0%
Finland	2	1%	2	1%
Ireland	2	1%	1	<1%
Israel	2	1%	2	1%
Cyprus	1	<1%	N/A	N/A
Greece	1	<1%	NR	NR
Hungary	1	<1%	1	<1%
Slovakia	1	<1%	N/A	N/A
Bahamas	0	0%	NR	NR
Belarus	0	0%	0	0%
Belize	0	0%	NR	NR
Bosnia and Herzegovina	0	0%	0	0%
Bulgaria	0	0%	N/A	N/A
Burkina Faso	0	0%	NR	NR
China - Hong Kong	0	0%	0	0%
China - Macau	0	0%	0	0%
Croatia	0	0%	1	<1%
Czech Republic	0	0%	3	1%
El Salvador	0	0%	N/A	N/A
Estonia	0	0%	N/A	N/A
Fiji	0	0%	NR	NR
Georgia	0	0%	NR	NR
Guatemala	0	0%	N/A	N/A
Honduras	0	0%	NR	NR
Iceland	0	0%	0	0%

⁸⁹ The Province of Newfoundland was not included in the 2003 figures as it did not participate in this survey. On the other hand, the Province of Nunavut was not included in the 1999 survey as the application of the Convention to this Province was extended only in 2000.

⁹⁰ Belgium's ratification of the Convention took only effect on the 1 May 1999, consequently the 1999 statistics in relation to Belgium only represents 8 months as opposed to a year.

Latvia	0	0%	N/A	N/A
Lithuania	0	0%	N/A	N/A
Luxembourg	0	0%	1	<1%
Malta	0	0%	N/A	N/A
Mexico	0	0%	0	0%
Monaco	0	0%	NR	NR
Nicaragua	0	0%	N/A	N/A
Norway	0	0%	3	1%
Panama	0	0%	1	<1%
Romania	0	0%	1	<1%
Slovenia	0	0%	0	0%
Sri Lanka	0	0%	N/A	N/A
Thailand	0	0%	N/A	N/A
Turkey	0	0%	N/A	N/A
UK - Bermuda	0	0%	0	0%
UK - Falkland Islands	0	0%	0	0%
UK - Isle of Man	0	0%	0	0%
UK - Montserrat	0	0%	0	0%
UK - Northern Ireland	0	0%	1	<1%
UK - Scotland	0	0%	3	1%
Uzbekistan	0	0%	0	0%
Colombia	NR	NR	0	0%
UK - Cayman Islands	NR	NR	1	<1%
Mauritius	NR	NR	1	<1%
Total	238	~100%	205⁹¹	~100%

N/A - not applicable because it was not a Contracting State in 1999.

NR – no response received in the particular year.

Overall the number of applications received by Contracting States has increased. Indeed, the number of applications to Spain more than tripled, alongside the more than double return applications received. Access applications to Switzerland more than doubled, alongside the nearly fourfold increase recorded in return applications. Australia's increased number of access applications is in contrast with a decrease in the number of return applications received.⁹²

In proportion to the number of return applications, Austria received a high proportion of access applications, with a ratio of 52% : 48% return to access applications. This is much higher than the global average of 87% : 13% and is an increase in access applications compared with the 1999 survey where the ratio was 60% : 40%.

The exceptions to this overall increase are England and Wales (a decrease from 25 to 17), Germany (a decrease from 24 to 18), France (a decrease from 15 to 13), the Netherlands (a decrease from 8 to 6), and Norway and Scotland (each a decrease from 3 to 0).⁹³ It might be observed that whilst in 1999 it was found that England and Wales

⁹¹ The 1999 survey analysed 197 incoming access applications received by 25 Contracting States. In addition, overall numbers but not detailed information were received from four other Contracting States, namely Argentina, Croatia, South Africa and Mauritius. Taking into account the number of incoming access applications received by these four States, the number rises to 205 applications.

⁹² The number of return applications fell from 64 (7%) to 43 (3%) in 2003. The number of access applications on the other hand rose from 14 (7%) to 19 (8%).

⁹³ Croatia, Italy, Luxembourg, Panama, Portugal, Romania and Northern Ireland also decreased by one application.

received the second highest number of applications in relation to both return and access applications, in 2003 they only received the fifth highest number of access applications.⁹⁴

Requested States which responded in 2003 and 1999

Country	2003 Count	1999 Count	+/- Count	% Increase/Decrease
USA	59	44	+ 15	~ + 34%
Australia	19	14	+ 5	~ + 36%
Spain	19	6	+ 13	~ + 217%
Germany	18	24	- 6	-25%
UK - England & Wales	17	25	- 8	-32%
France	13	15	- 2	~ - 13%
Austria	11	8	+ 3	~ + 38%
Canada	11	8	+ 3	~ + 38%
Switzerland	11	5	+ 6	+ 120%
Argentina	6	6	0	0%
Netherlands	6	8	- 2	- 25%
New Zealand	6	4	+ 2	+ 50%
Sweden	5	2	+ 3	+ 150%
Chile	4	4	0	0%
Denmark	4	2	+ 2	+ 100%
Italy	3	4	- 1	- 25%
Portugal	3	4	- 1	- 25%
South Africa	3	0	+ 3	+ 300%
Belgium	2	0	+ 2	+ 200%
Finland	2	2	0	0%
Ireland	2	1	+ 1	+ 100%
Israel	2	2	0	0%
Hungary	1	1	0	0%
Belarus	0	0	0	0%
Bosnia and Herzegovina	0	0	0	0%
China - Hong Kong	0	0	0	0%
China - Macau	0	0	0	0%
Croatia	0	1	- 1	- 100%
Czech Republic	0	3	- 3	- 300%
Iceland	0	0	0	0%
Luxembourg	0	1	- 1	- 100%
Mexico	0	0	0	0%
Norway	0	3	- 3	- 300%
Panama	0	1	- 1	- 100%
Romania	0	1	- 1	- 100%
Slovenia	0	0	0	0%
UK - Northern Ireland	0	1	- 1	- 100%
UK - Scotland	0	3	- 3	- 300%
Uzbekistan	0	0	0	0%
Total	227	203	+ 24	~ + 12%

⁹⁴ In relation to return applications they still had the second highest proportion in 2003 (11%). See Part I of the 2003 Report p. 1.

The above Table shows that there has been a slight increase in the overall number of applications in relation to those Contracting States that responded to both the 2003 and the 1999 survey.

The most significant proportionate increases are in Sweden and Switzerland. Sweden received 5 applications in 2003 rather than 2 in 1999. In contrast some States, for example, the Czech Republic, Norway and Scotland which each received 3 access applications in 1999, received none in 2003. England and Wales also received significantly less, 17 rather than 25 (a reduction of 32%) applications in 2003.

Comparing Received Access Applications in 2003 and 1999 Excluding those Made and Received from Newly Contracting States After 1999⁹⁵

Country	2003 Count	1999 Count	+/- Count	% Increase/Decrease
USA	59	44	15	34%
Australia	19	14	5	36%
Spain	19	6	13	217%
UK - England & Wales	16	25	-9	-36%
Germany	15	24	-9	-38%
France	13	15	-2	-13%
Canada	11	8	3	38%
Switzerland	11	5	6	120%
Austria	9	8	1	13%
Poland	8	2	6	300%
Argentina	6	6	0	0%
Netherlands	6	8	-2	-25%
New Zealand	6	4	2	50%
Chile	4	4	0	0%
Denmark	4	2	2	100%
Italy	3	4	-1	-25%
Portugal	3	4	-1	-25%
South Africa	3	0	3	300%
Sweden	5	2	1	50%
Belgium	2	0	2	200%
Finland	2	2	0	0%
Ireland	2	1	1	100%
Israel	1	2	-1	-50%
Cyprus	1	1	0	0%
Greece	1	3	-2	-67%
Hungary	1	1	0	0%
Bahamas	0	0	0	0%
Belarus	0	0	0	0%
Belize	0	0	0	0%

⁹⁵ The numbers of applications received in 1999 by Bahamas, Belize, Burkina Faso, Cyprus, Fiji, Georgia, Greece, Honduras, Malta, Monaco and Poland were taken from the 1999 outgoing access applications database as these Contracting States did not participate in the 1999 survey. On the other hand, the numbers of applications received in 2003 by Colombia, Mauritius and UK – Cayman Islands were taken from the 2003 outgoing access cases database as these Contracting States did not participate in the 2003 survey.

Bosnia and Herzegovina	0	0	0	0%
Burkina Faso	0	0	0	0%
China - Hong Kong	0	0	0	0%
China - Macau	0	0	0	0%
Colombia	0	0	0	0%
Croatia	0	1	-1	-100%
Czech Republic	0	3	-3	-300%
Fiji	0	0	0	0%
Georgia	0	0	0	0%
Honduras	0	0	0	0%
Iceland	0	0	0	0%
Luxembourg	0	1	-1	-100%
Mauritius	0	1	-1	-100%
Mexico	0	0	0	0%
Monaco	0	0	0	0%
Norway	0	3	-3	-300%
Panama	0	1	-1	-100%
Romania	0	1	-1	-100%
Slovenia	0	0	0	0%
UK - Bermuda	0	0	0	0%
UK - Cayman Islands	0	1	-1	-100%
UK - Falkland Island	0	0	0	0%
UK - Isle of Man	0	0	0	0%
UK - Montserrat	0	0	0	0%
UK - Northern Ireland	0	1	-1	-100%
UK - Scotland	0	3	-3	-300%
Uzbekistan	0	0	0	0%
Total	228	211	17	8%

B. THE RESPONDENT

Unlike the 1999 questionnaire, the 2003 survey asked for the relationship between the respondent and the child as it was felt that this information would be more informative than merely enquiring about the gender of the respondent.⁹⁶

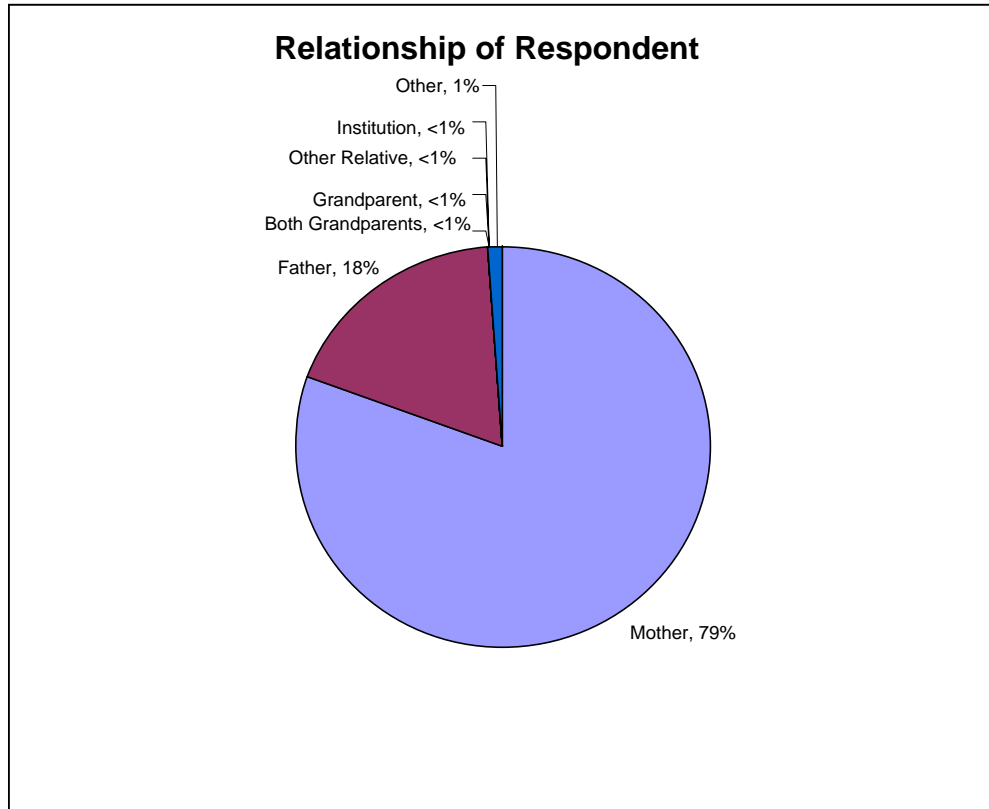
1. The relationship of the respondent to the child⁹⁷

⁹⁶ In Part I of the 1999 Report, Pg 8, it was found that, as a general rule, in almost all applications females and males corresponded to mothers and fathers. This was based on information obtained from the USA which accounted for most of the applications in that year.

⁹⁷ In **one** application the gender of the respondent was not stated.

Relationship of the Respondent

	Number	Percent
Mother	188	79%
Father	43	18%
Grandparent	1	<1%
Both Grandparents	1	<1%
Other Relative	1	<1%
Institution	1	<1%
Other	2	1%
Total	237	~100%



The 2003 statistics show the relationship of the respondent to the child, as opposed to the gender (*i.e.*; simply male/female) of the respondent. We are now able to provide a fuller picture than in the 1999 survey with information on other respondents such as grandparents, other relatives and 'other' respondents.⁹⁸

This additional detail shows that a high proportion, 79%, of respondents in the survey were mothers. This is a decrease on figures recorded in the 1999 survey (insofar as 'female' can normally be taken to mean 'mother') which showed that 86% of respondents were female.

Notwithstanding this decrease, as in 1999, the number of mother/female respondents is more pronounced in relation to access applications than in return applications. In the return applications made in 2003, only 68% of 'taking persons' were found to be mothers. In 1999, the difference was even more pronounced with 69% of females being respondents to return applications and 86% in relation to access applications.

⁹⁸ In relation to the one 2003 application involving 'other relatives', detailed information was available; this application involved the child's uncle and aunt. The two applications where the respondent was recorded as 'other', involved the child's foster parents and the child's stepmother.

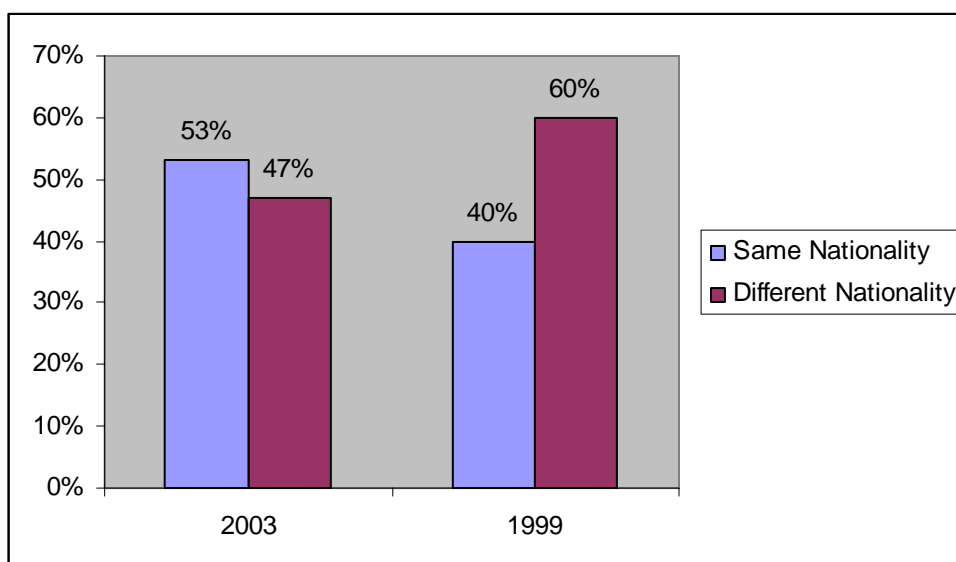
Within these findings there were variations between Contracting States. All 8 respondents to access applications made to Poland, for example, were mothers and 95% of the respondents to access applications to Spain were mothers. Only in South Africa was there a minority of mothers as respondents to access applications, though the number was small, 1 out of 3 access applications.

2. The nationality of the respondent⁹⁹

Respondent Same Nationality as Requested State

	Number	Percent
Same Nationality	114	53%
Different Nationality	102	47%
Total	216	100%

The above Table shows that of the applications on which we had information about the nationality of the respondent, 53% involved a respondent who had the same nationality as the requested State and 47% who had a different nationality.¹⁰⁰



The Chart above compares the 2003 findings with those found in 1999. As can be seen, there is a significant difference between the two. Whereas the proportion of respondents with same nationality as the requested State was a distinct minority in 1999, 40%, in 2003 they form the majority, 53%.

Unlike in 1999, this figure corresponds with global averages regarding return applications. In both 1999 and 2003, a higher proportion of 'taking persons' had the same nationality as the requested State.¹⁰¹

As in 1999 there were some differences between Contracting States: for example, all 8 of the applications received by Poland, the respondent was Polish.¹⁰² In contrast, in some States none of the respondents had the same nationality.¹⁰³

⁹⁹ In 22 applications the nationality of the taking person was not stated.

¹⁰⁰ 'Same Nationality' includes 9 cases (4%) where the taking person had dual nationality, one nationality being that of the requested State. 'Different Nationality' includes 4 cases (2%) where the taking person had dual nationality, both nationalities being different from that of the requested State. It also included one case (<1%) where there were dual respondents who each had different nationalities. The 1999 survey did not take into account dual nationality.

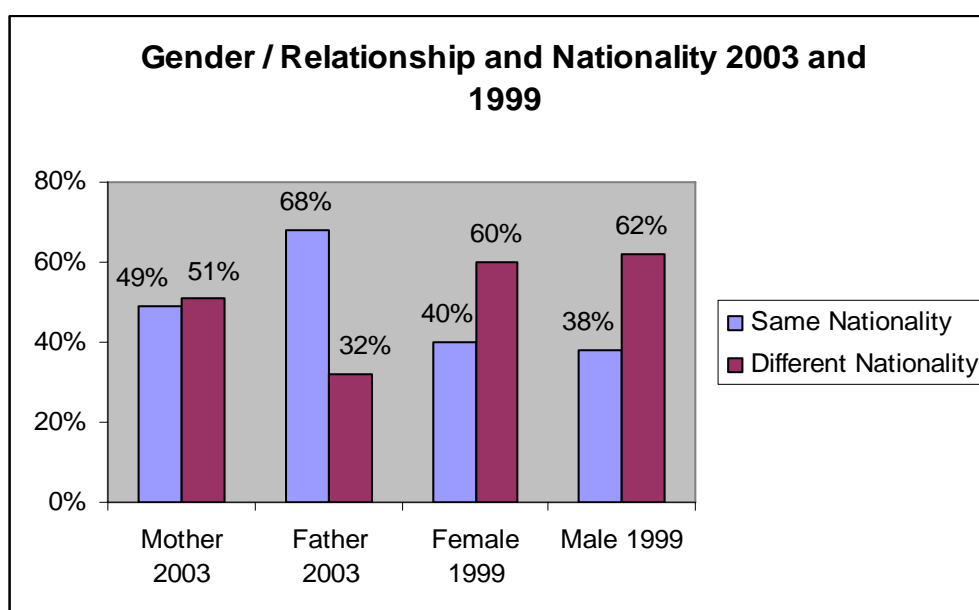
¹⁰¹ In 2003, 53% of taking persons and in 1999, 52% of taking persons had the same nationality as the requested State.

3. The relationship and nationality of the respondent combined¹⁰⁴

Nationality and the Relationship of Respondent to Child

	Relationship of Respondent to Child						Total
	Mother	Father	Grandparent	Both Grandparents	Other Relative	Other	
Same Nationality	83	28	1	1	0	1	114
Different Nationality	87	13	0	0	1	0	101
Two Respondents- Different Nationalities	0	0	0	0	0	1	1
Total	170	41	1	1	1	2	216

The Table above shows the nationality of the respondent in relation to their relationship to the child.



The above Chart just compares the nationality of mothers and fathers in 2003 with males and females in 1999.¹⁰⁵ In 2003 only 49% of mothers and 68% of fathers were nationals of the requested State. These figures differ from the 1999 survey which recorded that 40% of females and 38% of males were nationals of the requested State.¹⁰⁶ Indeed, in the case of fathers this is almost a direct reversal from the position in 1999.

These figures also show a different pattern from that found in relation to return applications in both 2003 and 1999. In 2003, 54% of mothers and 55% of fathers had the same nationality as the requested State as opposed to 52% female and 53% male in 1999.

The overall findings mask differences between Contracting States. For example all 8 mothers who were respondents to access applications made to Poland were Polish. In

¹⁰² All the respondents similarly had the same nationality as the requested State in the case of Chile, Hungary, Portugal and Slovakia.

¹⁰³ Viz Cyprus, Israel, Italy and South Africa.

¹⁰⁴ This information was not available in 22 applications.

¹⁰⁵ As can be seen in the table above, in 2003 there were also respondents recorded as being both grandparents, other relative and 'other'.

¹⁰⁶ Again, these results only mirror the 1999 results insofar as 'female' can normally be taken to mean 'mother' and 'male' can normally be taken to mean 'father'.

contrast, none of the 3 mothers who were respondents to applications made to Italy were Italian. Correspondingly, all 3 fathers who were respondents to applications made to England and Wales were British.

C. THE CHILDREN

1. The total number of children

Altogether, there were at least 321 children involved in the 238 incoming return applications. This can be compared with the 1999 survey which recorded a total of at least 271 children being involved in the 197 new applications in that year.¹⁰⁷

In 2003 this works out at an average of 1.35 compared with an average of 1.38 children per application in 1999.¹⁰⁸

2. Single children or sibling groups¹⁰⁹

Single Child or Sibling Group

	Number	Percent
Single Child	169	71%
Sibling Group	68	29%
Total	237	100%

Globally, 71% of applications involved a single child. This compares with 69% in 1999. As in the 1999 survey there were a slightly higher proportion of access applications involving single children than in return applications, 70% compared with 66% (63% in 1999).

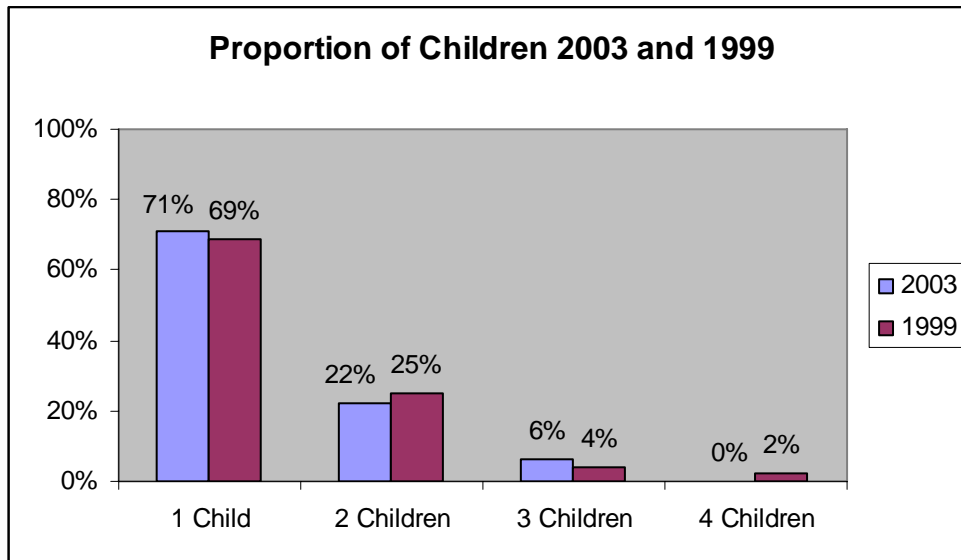
Number of Children

	Number	Percent
1 Child	169	71%
2 Children	53	22%
3 Children	15	6%
Total	237	~100%

¹⁰⁷ The data is only available in 237 of the 238 applications therefore there is at least another child involved in addition to the basic figure of 320 children. Similar projections were used in 1999 to gain an approximate figure (single or multiple child information was used to multiply any figures accordingly), see Part I of the 1999 Report, Pg 27, n 40.

¹⁰⁸ This is based on the projected figures of 321 children in 238 cases in 2003 compared with 271 children in 197 cases in 1999.

¹⁰⁹ Information on this was not available in one application.



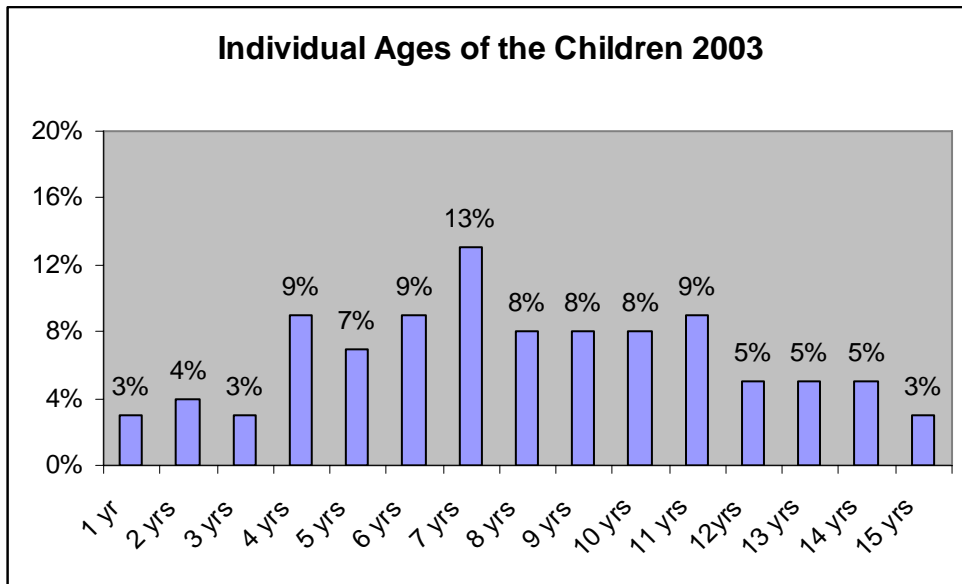
The above Chart compares the 2003 and 1999 survey. In 2003, 93% of applications involved 1 or 2 children, in 1999 95% did. This is the same as the proportion recorded in return applications in both 1999 and 2003.

3. The age of the children¹¹⁰

Individual Ages 2003

	Number	Percent
1 yr	9	3%
2 yrs	13	4%
3 yrs	10	3%
4 yrs	27	9%
5 yrs	21	7%
6 yrs	27	9%
7 yrs	37	13%
8 yrs	25	8%
9 yrs	25	8%
10 yrs	23	8%
11 yrs	28	9%
12 yrs	15	5%
13 yrs	14	5%
14 yrs	14	5%
15 yrs	8	3%
Total	296	~100%

¹¹⁰ This information not was available in relation to 25 children.

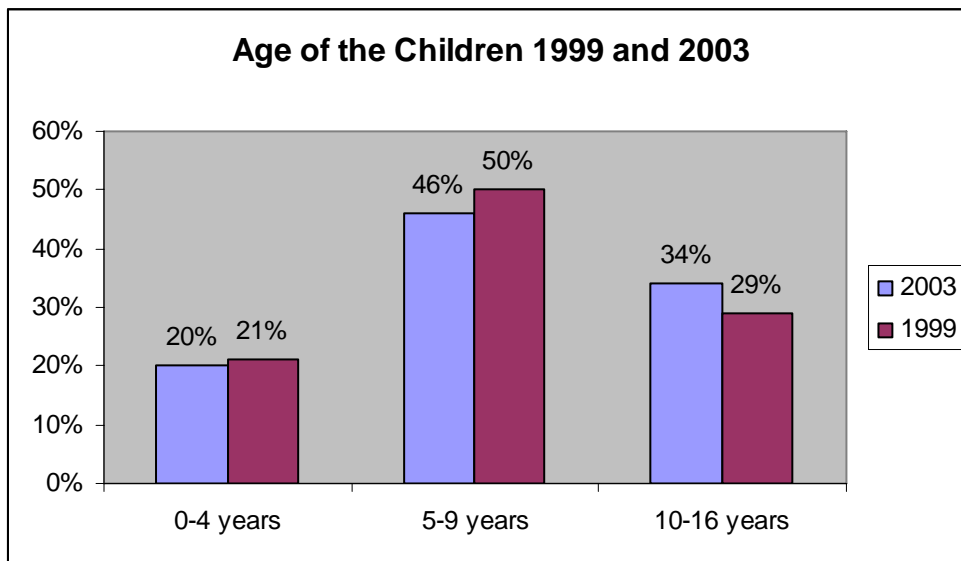


The above Table and Chart show the ages of the individual children involved. We do not have this level of detail from the 1999 survey to be able to compare these results.

There were no applications in relation to babies, that is, children under one year old. This reflects the proportion of return applications, 1%, involving babies. Access applications tend to involve slightly older children. Only 35% of access cases involved 1 - 6 year olds compared with 54% in relation to return applications. The age of children in relation to access peaks at 7 years old, whereas in relation to return applications it peaks at 5 years old.

Age Band of the Children 2003

	Number	Percent
0-4 years	58	20%
5-9 years	136	46%
10-16 years	102	34%
Total	296	100%



The Table and Chart above show comparable information regarding the age bands of the children in 2003 and 1999. In 2003, 46% were aged between 5 and 9 years old. This can

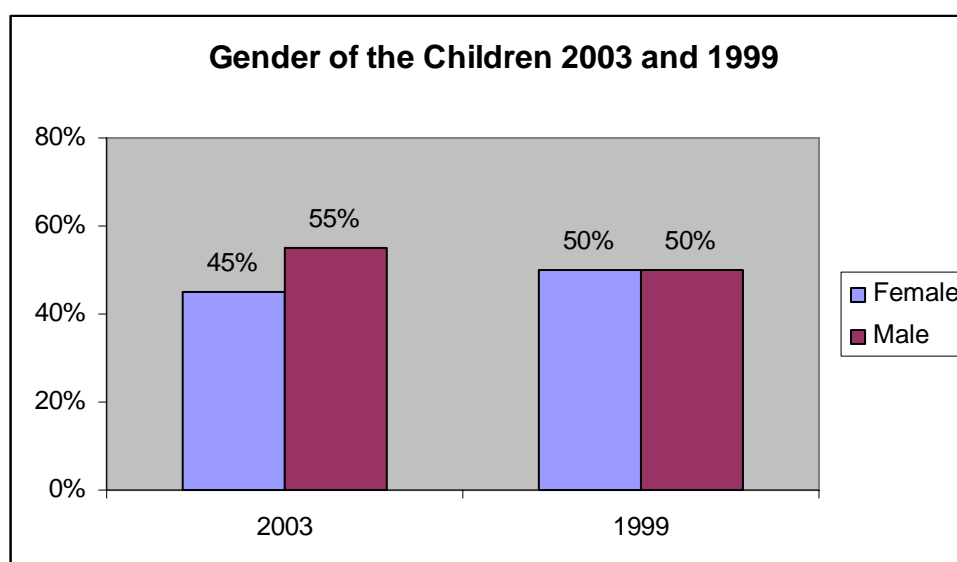
be compared with 50% in 1999. There has been a slight shift in favour of older children. The proportion of children aged between 10-16 years has increased, from 29% to 34%. Return applications show a similar (albeit smaller) increase in relation to the number of 10 - 16 year olds, 22% in 2003 as opposed to 21% in 1999.

In relation to both 2003 and 1999, access applications tend to involve older children than return applications. In 1999 there were fewer children in the 0 - 4 years age group, 21% (access) as against 38% (return), and more in the 10 - 16 years age group, 29% (access) as opposed to 21% (return). In 2003 this finding is even more pronounced. There were fewer children in the 0 - 4 years age group, 20% (access) as against 36% (return), and more in the 10 - 16 years age group, 34% (access) as opposed to 22% (return).

4. The gender of the children¹¹¹

Gender of the Children

	Number	Percent
Female	145	45%
Male	175	55%
Total	320	100%



Of the 257 children whose gender was stated, 55% were males. This is higher than the figure of 50% recorded in 1999. It is also higher than the 49% and 53% recorded in return applications in 2003 and 1999 respectively.

While the proportion of male and female children was relatively equal in most Contracting States, there was a higher proportion of female children in applications particularly to Italy (all 3 children involved in access applications were female). Conversely, all the children (5) were female in applications to Portugal.

D. THE OUTCOMES

The outcomes of the applications represent an important part of this analysis. We must emphasise that that outcomes analysed in this report are for all applications received in 2003 regardless of whether an outcome was reached in that year, or later, or even at all.

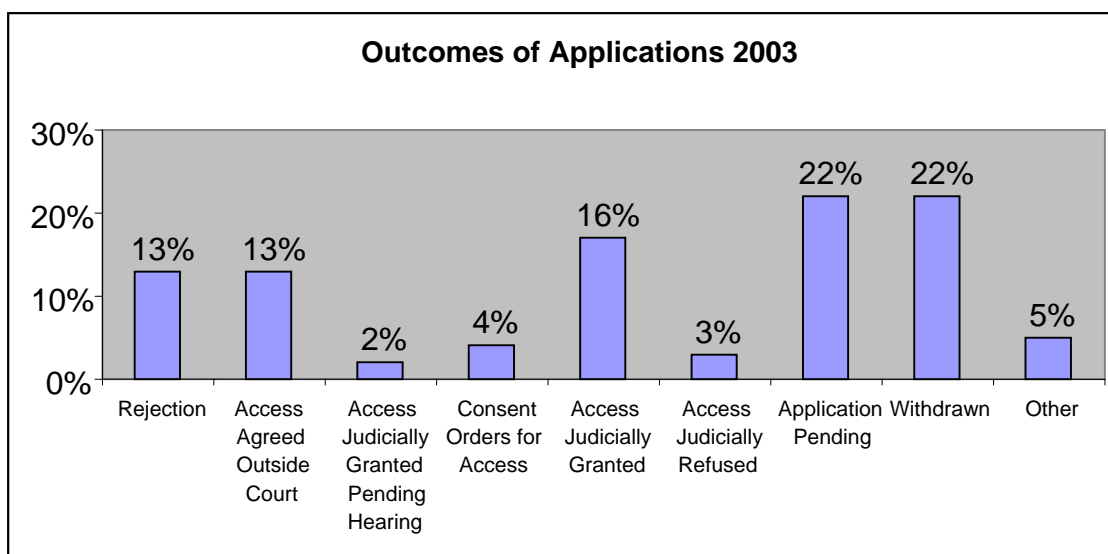
¹¹¹ Information was not available for 1 child.

All applications that are still open at the end of June 2005 have been classed as 'pending'.

1. Overall outcomes¹¹²

Outcome of the Application

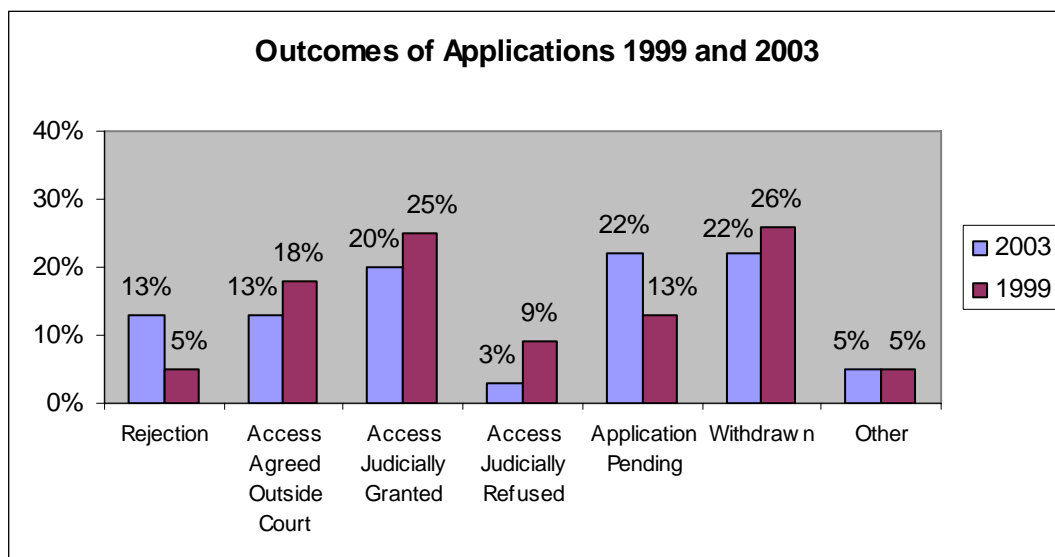
	Number	Percent
Rejection	30	13%
Access Agreed Outside Court Proceedings	29	13%
Access Judicially Granted Pending Hearing	5	2%
Consent Orders for Access	10	4%
Access Judicially Granted	38	16%
Access Judicially Refused	7	3%
Application Pending	50	22%
Withdrawn	52	22%
Other	11	5%
Total	232	100%



The above Table and Chart show the outcome of all applications in 2003. In addition to this there were **6** cases in which the outcome was unknown.

Unlike the 1999 survey, the 2003 figures show the number of cases where access was granted pending a hearing and the number of cases in which consent orders for access were made. Together these accounted for 15 cases (6%). It is not entirely clear how these cases would have been recorded in 1999 however for the purpose of comparison with the 1999 survey we will categorise them as 'Access Judicially Granted', as they would have required some form of judicial sanction.

¹¹² The outcome was not known in 6 applications.



'Access Judicially Granted' cases on this Chart excludes cases where access was judicially granted pending a hearing but includes cases where consent orders for access were made; and cases where access was judicially granted (as Hague applications or under domestic law). 'Access Judicially Refused' includes refusals as Hague applications and refusals under domestic law. The 'Other' figure represents a variety of different outcomes.¹¹³

In 48 cases (21%) access was judicially granted. In 35 of these cases, access was granted as a Hague application, in 13 cases it was granted under domestic law. In relation to refusals, 3 cases were judicially refused as a Hague application and 4 were refused under domestic law. In 1999, of the 48 applications judicially granted, 12 were known to be granted under the Convention and 25 were known to have been granted under domestic law. Of the 17 refusals, 5 were known to be refused under the Convention and 8 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.

Proportionally, the figures show that, at 33%, the most common outcome for an access application was for it to still be pending. This much higher than the figure of 13% recorded in relation to access cases in 1999 and the figures of 14% and 9% recorded in relation to return applications in 2003 and 1999 respectively. These figures are accurate as at 30th June 2005 which is a minimum of 18 months and a maximum of 2 ½ years since the applications were made. Although it is understandable that access cases may take considerably longer to conclude,¹¹⁴ the high proportion of pending cases does give pause for thought and in any event is evidence of slower disposals of access cases generally. A large proportion of the pending applications 46% (23 of the global total of 50) were to the USA amounting to 39% of all access made to that State. Canada, too, had a high proportion of pending access applications, 46% (5 out of 11 applications).

Excluding cases in which access was granted pending the hearing, overall 77 of the 232 cases for which the outcome was known (33%) concluded with applicant gaining access, either as a result of a voluntary agreement, or some kind of court order. This is a significant decrease on the figure of 43% recorded in 1999. This compares with 51% of

¹¹³ In four of the 'other' cases the child was returned. In one further case divorce proceedings were initiated and access was to be regulated as a part of this proceedings. The other four cases there were individual outcomes specific to that cases, as follows: One case was said to be 'attorned to jurisdiction'; in another case an access order was made before the date the application was received therefore the case was closed; the third case was dealt with under 1977 Nordic Convention and the application was filed directly to court; and in the final case the attorney negotiated access. Finally, in two further cases the exact outcome was not made clear.

¹¹⁴ See further below, under Section E on speed.

cases ending in a return of the child in 2003, and 50% ending in a return in 1999. In 2003 29 of the 77 (38%) cases that ended in access, did so as a result of a voluntary agreement.

Paradoxically, of the applications which went to court, 87% ended in access being granted and 13% in a refusal to grant access.¹¹⁵ This is a marked increase on the figures of 74% and 26% respectively, recorded in 1999. This proportion is also higher than 68% of returns recorded in 2003. This is very different to the pattern found in 1999 where access and return figures were found to be exactly the same.

The number of cases in which access was voluntarily agreed has however decreased from 35 applications (18%) in 1999 to 29 applications (13%) in 2003. This figure is also below the voluntary return rates of 19% and 18% recorded in 2003 and 1999 respectively.

The number of withdrawn cases (20%) was much higher than that recorded for return applications (14%) but was nevertheless a decrease on the 26% that were withdrawn in 1999. Given the more protracted nature of access applications a higher withdrawal than for return applications might be expected.

Rejections amounted to 13% of applications which is an increase on the figure of 5% recorded in 1999. It may also seem high when compared with the figures of 5% and 11% recorded in relation to return applications in 2003 and 1999 respectively.

2. The outcomes by Contracting States which received the applications

¹¹⁵ These figures include the following categories of outcome: Access Judicially Granted Pending Hearing; Consent Orders for Access - as Hague Application; Access Judicially Granted - As Hague Application; Access Judicially Granted - Under domestic law; Access Judicially Refused - as Hague; and Access Judicially Refused - under domestic law.

The Outcomes by Contracting States which Received the Applications

	Overall Outcome per Application									Total
	Rejection	Access Agreed Outside Court Proceedings	Access Judicially Granted Pending Hearing	Consent Orders for Access	Access Judicially Granted	Access Judicially Refused	Application Pending	Withdrawn	Other	
Argentina			1			1		4		6
Australia	5	4		5			2	3		19
Austria		1	2		1	4		1		9
Belgium	1		1							2
Canada		1			3		5	1	1	11
Chile					2		1	1		4
Cyprus							1			1
Denmark	1				1	1		1		4
Finland							1	1		2
France	1	2		1	1		4	4		13
Germany	6	5	1		2		2		2	18
Greece									1	1
Hungary		1								1
Ireland					1		1			2
Israel							2			2
Italy				3						3
Netherlands	2	2			1				1	6
New Zealand		1			5					6
Poland					3	1	2	1	1	8
Portugal		1					1	1		3
Slovakia							1			1
Spain	3	2			9		1	3	1	19
Sweden		2			1			1	1	5
Switzerland	2	2			2		1	3	1	11
UK - England & Wales	1			1	1		2	11		16
USA	8	5			5		23	16	2	59
Total	30	29	5	10	38	7	50	52	11	232

The Table above shows the outcomes in relation to the Contracting States which received the applications. We have already considered the percentage of applications which globally end in each different outcome.

As in 1999, there was variation between Contracting States as to the outcome of access applications. As against an overall "access rate" of 33% (*i.e.* where access was agreed or judicially ordered) all 6 applications made to New Zealand and all 3 made to Italy concluded with access being agreed or ordered. In contrast only 2 out of 16 (13%) applications made to England and Wales ended with access being granted. There were more judicial refusals in Austria, 4 out of 9 applications (44%) to the State were refused. This was over half the global total of refusals.

England and Wales had a high proportion of withdrawn applications (69%) compared with the global average of 22%.¹¹⁶ Another country with a high withdrawal rate was

¹¹⁶ According to the Central Authority for England and Wales applications were withdrawn for a variety of reasons including: there was a lack of response from applicant in four applications; in once case access consent orders were made in return proceedings; in another applicant was not eligible for legal aid; a further case was withdrawn as access was occurring; in another the child returned and access was arranged in the requesting

Argentina, where 4 out of 6 cases were withdrawn. Indeed it is notable that none of the 6 applications to Argentina resulted in access being granted (though in one case access was granted pending the hearings).

States with rejection rates significantly greater than the global average of 13% include Germany (6 out of 18, 33%) and Australia (5 out of 19 cases, 26%). These figures are different to those found in 1999 where Australia did not reject any applications in 1999 and Germany rejected only 2 out of 24 (8%).

Judicial Outcomes by Contracting States Which Received the Application

	Overall Outcome per Application						Total
	Consent Orders for Access - as Hague	Consent Orders for Access - domestic law	Access Judicially Granted - as Hague Application	Access Judicially Granted - Under domestic law	Access Judicially Refused - as Hague	Access Judicially Refused - under domestic law	
Argentina					1		1
Australia	5						5
Austria			1		1	3	5
Canada				3			3
Chile			2				2
Denmark				1		1	2
France		1		1			2
Germany			1	1			2
Ireland				1			1
Italy	3						3
Netherlands			1				1
New Zealand			4	1			5
Poland			3		1		4
Spain			9				9
Sweden				1			1
Switzerland			1	1			2
UK - England & Wales		1		1			2
USA			5				5
Total	8	2	27	11	3	4	55

The above Table shows all cases where access was either ordered or refused in court.¹¹⁷

All cases were resolved under domestic law only in the following Contracting States: Canada; Denmark; Ireland; Sweden; England and Wales and the U.S.A. On the other hand, all cases were resolved as Hague applications in Australia, Chile, Germany, (*this is different from that suggested in the 1999 report*) Italy and Poland. States using a mixture of both domestic and Hague applications include Austria, New Zealand and Switzerland.

This finding again bears testimony to the differences in interpretation of article 21 of the Convention (see Section D1 above).

3. The reasons for rejection

state; and the final application was withdrawn to make return application. In 1999 52% of applications were withdrawn compared with the global norm of 26%.

¹¹⁷ It does not include cases where access was granted pending hearing and it does not include consent orders for access either.

Reason for Rejection by the Central Authority

	Number	Percent
Child over 16	3	10%
Child Located in Another Country	6	20%
Child Not Located	3	10%
Applicant Had No Rights of Custody	10	33%
Other	8	27%
Total	30	100%

The above Table shows the reasons applications were rejected by the Central Authorities. All of these applications were sent to the Central Authority of the requested State and they were then rejected by them.

There were many more rejections in 2003, 30 cases (13%) than in 1999 where 9 applications (5%) were rejected. Contrary to the results found in 1999, proportionally more access applications were rejected (13%) than return applications (6%).

The main reason for cases being rejected in 2003 was that the applicant had no rights of custody, **33%**. This is higher than both the 2003 return application figure of 19% and the 1999 figure of 22%.¹¹⁸ Australia accounted for 4 of the 10 cases and the USA accounted for another 5 of the 10 cases.¹¹⁹

Proportionally, the number of children located in another country (6 children, 20%) decreased from 1999 where three children (33%) were located in another country. 3 children were not located in 2003 as opposed to none in 1999.

The proportion of 'other' reasons is quite high (8 cases, 27%) and can be compared with 1999 the global average (6 cases, 67%). It is notable that although the figures are similar, proportionally this is a substantial decrease. It must also be noted that two of the 'other' reasons for rejection in 1999 were where the applicant had no rights of custody. This is a separate category in the 2003 survey.

In 2003 the 'other' reasons for rejection included 3 applications where custody proceedings were pending before a German court, 2 where applicant had no rights of access, one where the child was not habitually resident in the requesting State and one which was to be dealt under the Luxembourg Convention rather than the Hague Convention.¹²⁰

E. SPEED

The time taken to conclude access applications is an important issue and has therefore been given a thorough analysis on this section. The 2003 survey provides more detailed information than the 1999 survey.

The following section compares the time taken to resolve access agreements outside of court, as well as judicial access arrangements (in their various forms) and judicial refusals. As in the 1999 survey, we have omitted rejections, withdrawals, other outcomes and pending cases from this analysis. We have no information regarding timings in

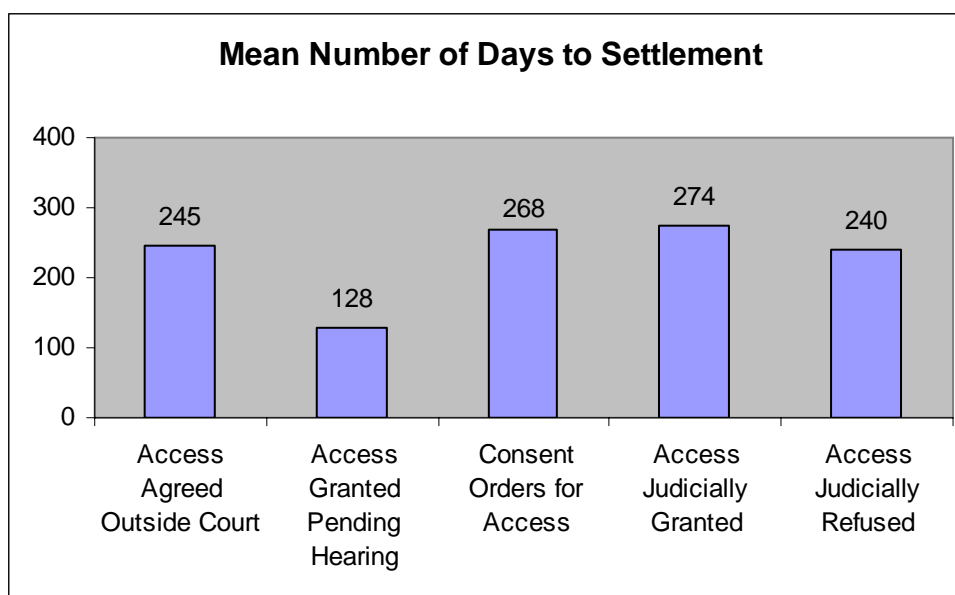
¹¹⁸ In the 1999 report this reason for refusal was categorised as 'other' but it is known that there were in fact two cases.

¹¹⁹ Indeed, this reason for rejection accounted for 4 out of the 5 Australian rejections and 5 out of the 8 USA rejections.

¹²⁰ In one case the 'other' reason was unknown.

relation to rejected applications, our information regarding outcomes categorised as 'other' is imperfect, and withdrawn applications are omitted as they cover a wide variety of possible reasons for withdrawal, timing being relevant only in some cases.

1. The time between application and outcome



The above Chart shows the mean number of days taken to reach an outcome. These mean averages therefore include those cases where orders had been made on appeal.¹²¹

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

Number of Days Taken to Reach Final Outcome: 2003 ¹²²

	Access Agreed Outside Court	Access Granted Pending Hearing	Consent Orders for Access	Access Judicially Granted	Access Judicially Refused
Mean	245	128	268	274	240
Median	224	128	177	242	240
Minimum	12	62	95	6	48
Maximum	511	193	671	635	487
Number of cases	17	2	10	32	6

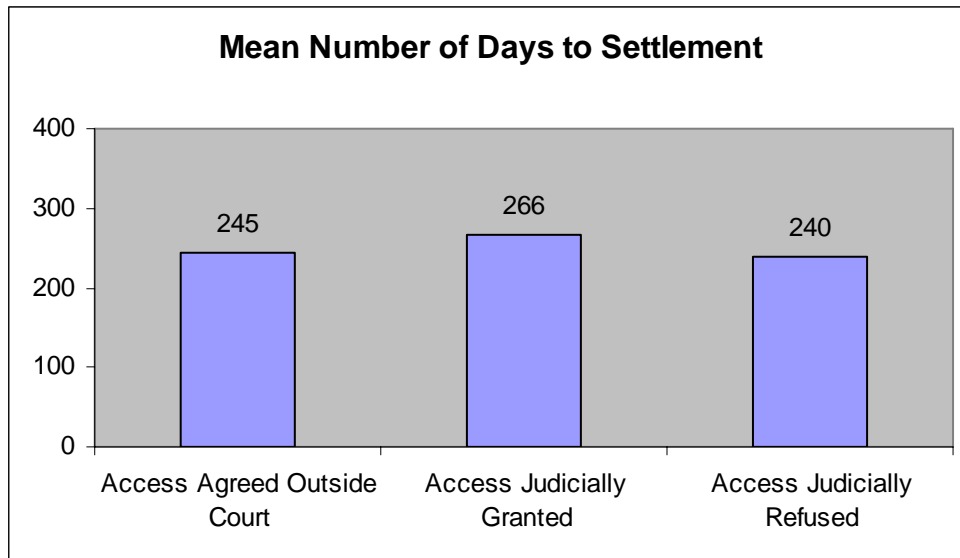
The above Chart shows that some applications were resolved very quickly, (including one judicial access order granted in 6 days and one voluntary agreement reached after 12 days – note the quickest an access order by consent was granted was 95 days) while other applications took much longer to reach a conclusion. Indeed, one case in which a consent order for access was granted took 671 days. It should also be remembered that some cases were still pending as at 30th June 2005.

¹²¹ Consent orders for access, judicial access orders and judicial refusals include those granted as Hague applications and those granted under domestic law.

¹²² This information was not available in 12 cases where access was agreed outside court, 3 cases where access was granted pending a hearing, 6 cases where access was judicially ordered and one case concerning judicial refusals.

It is notable that, although there are only 2 applications to comment upon,¹²³ it appears to take a long time for formal access to be granted pending a hearing.

When considering the final outcome of applications below, for comparability purposes with the 1999 analysis, we have further grouped the outcomes into two broad categories, namely, 'Access Judicially Ordered,' including access granted pending a hearing; consent orders for access; and judicial access orders (as Hague applications and under domestic law) and secondly, 'Access Judicially Refused' (as Hague applications and those refused under domestic law).



**Number of Days Taken to Reach Final Outcome: 2003
(including appealed cases)**

	Access Agreed Outside Court	Access Judicially Granted	Access Judicially Refused
Mean	245	266	240
Median	224	232	240
Minimum	12	6	48
Maximum	511	671	487
Number of cases	17	44	6

As the above Chart and Table show, there was relatively little difference in the overall timing regardless of whether access was voluntarily agreed or subject to court order. Ironically, perhaps, judicial refusals were made in the shortest mean time.

In 1999 the time taken to resolve an application was expressed in the form of weeks rather than the mean number of days. Our results can however be compared:

¹²³ In one application this information was not available.

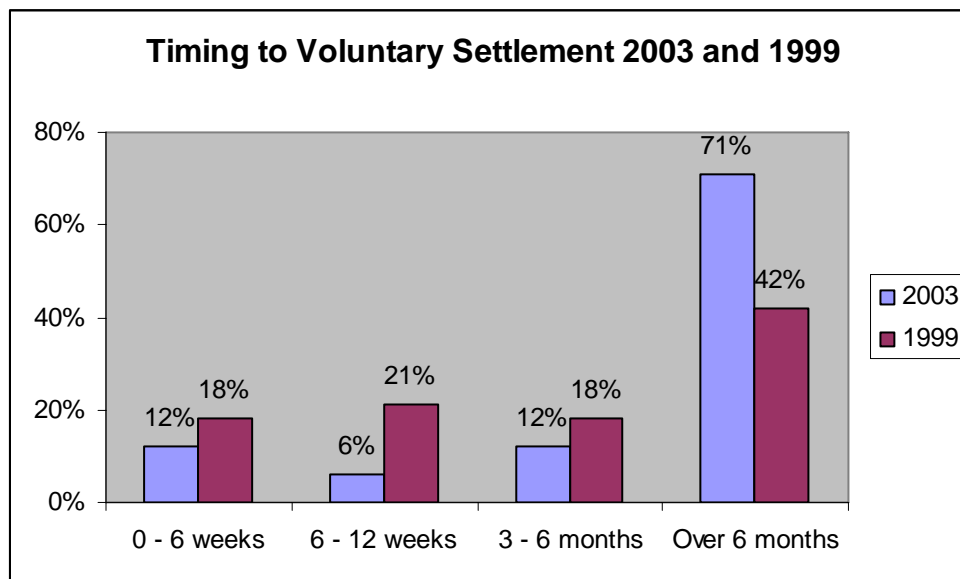
Timing to Voluntary Agreement Outside Court 2003

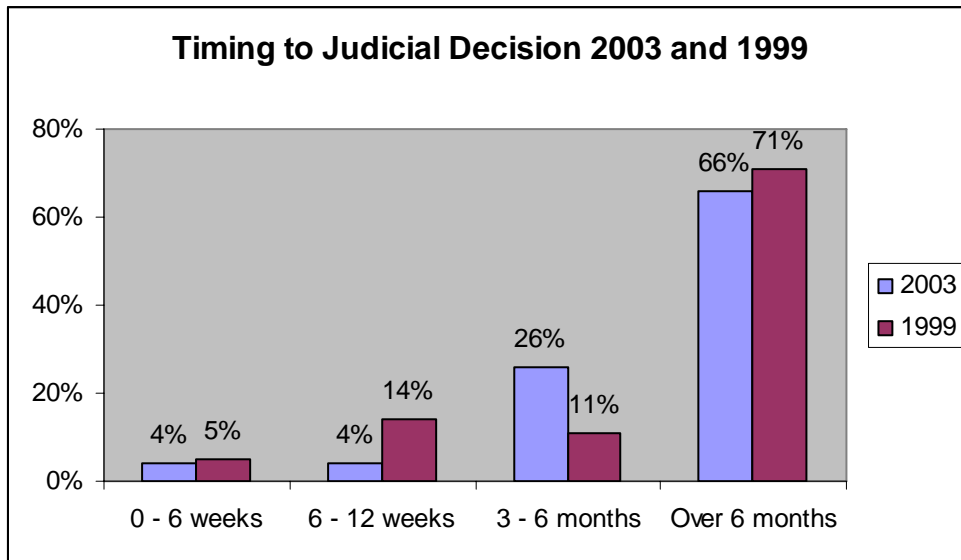
	Number	Percent
0-6 weeks	2	12%
6-12 weeks	1	6%
3-6 months	2	12%
Over 6 months	12	71%
Total	17	~100%

Timing to Judicial Decision 2003

	Number	Percent
0-6 weeks	2	4%
6-12 weeks	2	4%
3-6 months	13	26%
Over 6 months	33	66%
Total	50	100%

The above Charts show the time taken to agree access outside of court compared with the time taken to reach a judicial decision, whether this is to grant or refuse access. Regardless of how the eventual outcome was reached the majority of applications (71% of voluntary agreement and 66% of judicial settlements) took over 6 months to resolve.

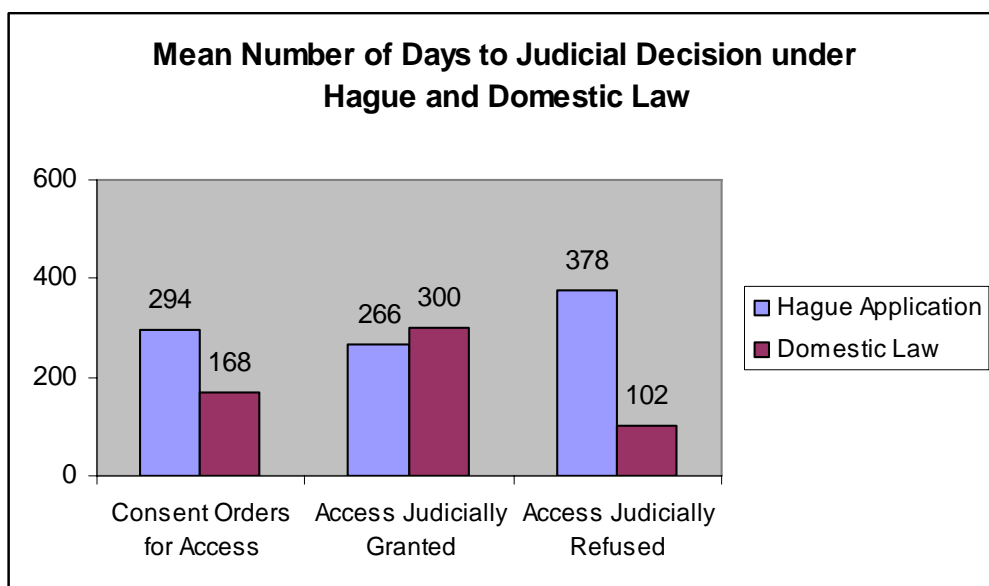




The above Charts compare timings of outcomes in 2003 and 1999. Strikingly, 71% of voluntary settlements took more than 6 months, compared with only 42% in 1999. On the other hand, of the cases that went to court, 66% took more than 6 months, compared with 71% in 1999. Dispositions within 6 weeks were infrequent, 2 voluntary return applications (12%) and 2 judicial decisions (4%), compared with 6 voluntary return applications (18%) and 3 judicial decisions (5%) in 1999.

This can be compared with judicial decisions in return applications where 18% took under six weeks and 33% took over 6 months to conclude. Access applications also took longer to reach voluntary conclusions than return applications. In relation to 2003 return applications, 39% were concluded with 6 weeks and 14% took over 6 months, compared with 9% and 64% in relation to access. In short, access applications took considerably longer than return applications to resolve.

It is also notable that 50 (22%) applications were still pending as at 30th June 2005 compared with 13% of applications in 1999 as at the comparable cut-off date.



The above Chart compares the mean number of days for judicial decisions made as Hague applications and under domestic law.¹²⁴ Perhaps surprisingly, in relation to both consent orders and refusals, decisions tended to take longer as Hague applications. However, orders granting access (by far and away the most common outcome) were made quicker under the Convention than under domestic law.

**Number of Days Taken to Reach Final Outcome: 2003
(excluding appealed cases)**

	Access Judicially Granted	Access Judicially Refused
Mean	262	167
Median	226	129
Minimum	6	48
Maximum	671	362
Number of cases	40	4

The above Table analyses the time of judicial decisions that were not appealed. Interestingly, it can be seen that judicial refusals were made in less time (167 days on average) than orders for access (262 days), though both outcomes are quicker than if appeals are included (*i.e.* 274 days for access being granted and 240 days for refusals). Some unappealed cases took a long time to resolve, one order being made after 671 days and one refusal after 362 days.

Timing of Access Agreed Outside Court by Contracting States

	Timeband to Voluntary Agreement				Total
	0-6 weeks	6-12weeks	3-6months	Over 6 months	
Australia	1			3	4
Austria			1		1
France	1	1			2
Hungary				1	1
New Zealand				1	1
Sweden				2	2
Switzerland				1	1
USA			1	4	5
Total	2	1	2	12	17

As the Table above shows, voluntary agreements are rarely resolved in under 6 months. The exception was in France where both the voluntary resolutions were reached within 12 weeks.

¹²⁴ This chart reflects the average number of days in 50 applications for which the information was available. Information was not available in relation to 4 cases in which access was granted under domestic law and one case in which access was refused under domestic law.

Timing of Access Resolved Judicially by Contracting States

	Timeband to Judicial Decision				Total
	0-6 weeks	6-12weeks	3-6months	Over 6 months	
Argentina				1	1
Australia			2	3	5
Austria	1	2	1	2	6
Belgium				1	1
Canada			2		2
Chile			1	1	2
Denmark				1	1
France				1	1
Germany				1	1
Italy			2	1	3
Netherlands				1	1
New Zealand			2	3	5
Poland				3	3
Spain			2	7	9
Sweden				1	1
Switzerland	1			1	2
UK - England & Wales			1	1	2
USA				4	4
Total	2	2	13	33	50

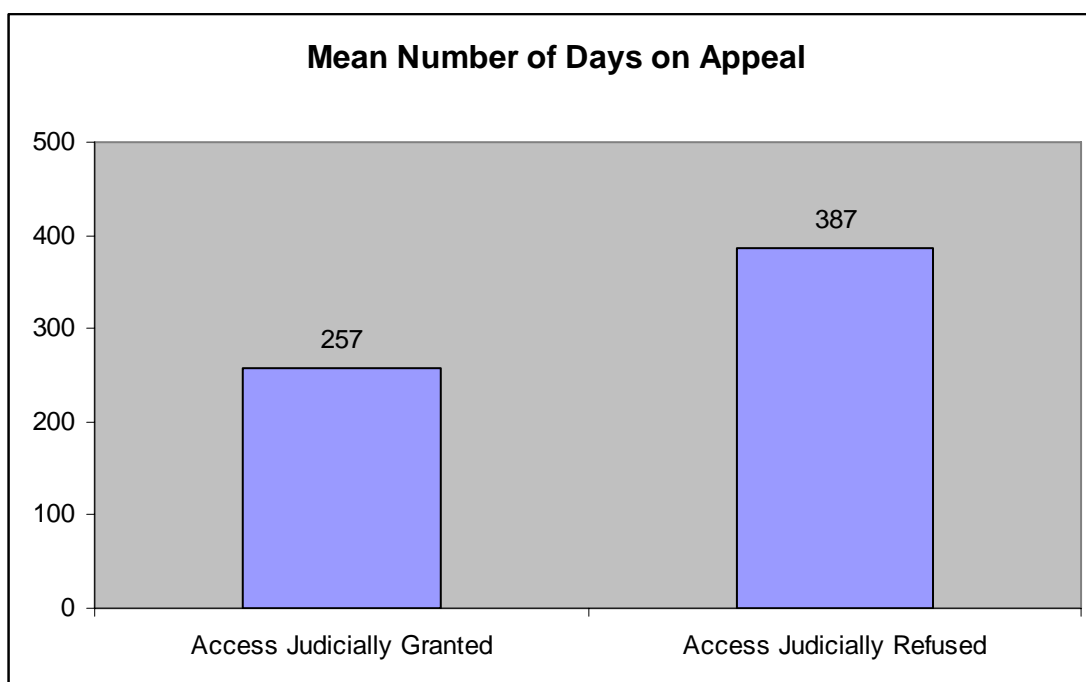
As the above Table shows most Contracting States find it hard to judicially resolve access applications in under 6 months. The exception to this was Austria in which 4 of the 6 judicial resolutions were resolved within 6 months.

F. APPEALS

Appeals

	Appellate Final Judicial Decision		Total
	Granted	Refused	
Granted	3	1	4
Refused	1	1	2
Total	4	2	6

Globally, only 6 access decisions were appealed which was 3% of all the applications analysed and 11% of cases going to court. This was half the proportion of appeals (22% of those going to court) in respect of return applications. Of the 4 appeals against the granting of an access order 3 were upheld and one refused. Of the 2 appeals against the refusal of access, one was upheld but the other reversed and access granted.



The above Chart shows the timing of appealed cases. Applications ending with judicial access being granted took on average 257 days which surprisingly is quicker than the 262 days average for unappealed orders. On the other hand, refusals took an average of 387 days which is considerably longer than the 167 days for unappealed refusals.

IV A COMPARISON BETWEEN APPLICATIONS FOR RETURN AND APPLICATIONS FOR ACCESS

As in 1999 the vast majority (84%) of applications made in 2003 under the 1980 Convention concerned return applications. In 1999 83% of applications were for return. As we said in the 1999 survey, the heavy preponderance of return applications reflects the perceived importance that the Convention places on the prompt return of children as against securing access about which the Convention primarily seeks to secure co-operation among Central Authorities rather to enforce via the courts.

The 2003 statistics show 45 of the Contracting States from which we have data received applications for return yet only 27 received access applications. This was more pronounced than in 1999 in which analysis was made of 30 States receiving return applications as against 25 receiving access applications. As in 1999, Mexico received a number of return applications (27) yet received no access applications. Similarly, Turkey received 35 return applications but no access applications. On the other hand (and again reflecting the 1999 finding),¹²⁵ Austria received 12 return applications and 11 access applications.

Applications for return were made by 53 States. Access applications were made by 39 States including one that was not a Contracting State. In 1999 47 States made return and 32 access applications.

As in 1999 we found there to be an interesting geographic difference between return and access applications in terms of the Contracting States making them. For example, analysing the five Contracting States which received the most applications in 2003, namely, the USA, England and Wales, Spain, Germany and Canada, we found that the States which made the most applications to these countries were not the same as those which made the most access applications.

¹²⁵ In 1999 Austria received 9 return and 8 access applications.

Although not as marked as in 1999, there remained a distinct difference between the relationship of the taking person to the child in return applications and that of the respondent in access applications with 68% of the former and 79% of the latter being mothers.¹²⁶

Unlike 1999,¹²⁷ roughly the same proportion, 55% to 53% respectively of taking persons and respondents had the same nationality as the requested State. However, when further broken down into gender, whereas in return applications 54% of mothers and 55% of fathers as taking persons had the same nationality as the requested State, in access applications the respective proportions were 49% and 68%.

As found in 1999, access applications were slightly more likely to concern single children, 71% as against 67% in return applications.

Again mirroring the finding in 1999, children tended to be younger in return applications than those in access applications with 56% of children involved in return applications being aged 6 or younger as against only 35% in access applications. Conversely, 22% of children in return applications were aged between 10 and 16 years, whereas 34% of children in the access applications were this age.¹²⁸

There was a slight difference in the gender of the children involved inasmuch as a slight majority (51%) of those involved in return applications were girls but were a minority (46%) in access applications.

In terms of outcome return applications were generally more successful with 51% of applications ending with a voluntary or judicial return of the child as against 33% of access applications ending with access being voluntarily agreed or judicially sanctioned.

More access applications were still pending at the cut-off date of 30 June 2005, 22% as opposed to 9% of return applications. There were similarly more withdrawals, 22% as against 14% (though this was less pronounced than in 1999 where the respective proportions were found to be 26% and 14%).

In contrast to the 1999 finding that proportionally more return applications were rejected than access applications (11% compared with 5%), in 2003 proportionally more access applications were rejected than return applications (13% compared with 6%).

With regard to timing, access applications were markedly slower to reach a conclusion than return applications. 18% of return applications that went to court were decided in less than 6 weeks whereas for access applications the proportion was just 4%. 14% of return applications as against 66% of access applications took over 6 months to reach a judicial decision. 39% of voluntary returns were negotiated in less than six weeks compared with just 12% of voluntary settlements in access applications. In contrast 71% of voluntary returns took over 6 months as against 14% of the voluntary settlements of access applications.

¹²⁶ In 1999 69% of taking persons and 86% of respondents were found to be female.

¹²⁷ In 1999 52% of taking persons but only 40% of respondents had the same nationality as the requested State.

¹²⁸ This was more pronounced than in the 1999 survey where the respective proportions were 21% and 29%.