

Questionnaire concerning the Practical Operation of the 1980 Child Abduction Convention

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

Name of State or territorial unit:¹	Germany
<i>For follow-up purposes</i>	
Name of contact person:	
Name of Authority / Office:	
Telephone number:	
E-mail address:	
Date:	

PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

Recent developments in your State²

1. Since the 2017 SC, have there been any significant developments in your State regarding the **legislation** or **procedural rules** applicable in cases of international child abduction? Where possible, please state the reason for the development and the results achieved in practice.

- No
 Yes

Please specify:

The German implementing law (Act to Implement Certain Instruments in the Field of International Family Law- IFLPA) has been amended. These amendments have been mainly (but not exclusively) necessary with regard to the coming into effect of the Brussels IIb Regulation on 1 August 2022.

In particular the local jurisdiction for declarations of wrongfulness (Art. 15 1980 HC) lies now with the specialized Hague courts.

2. Following the Covid-19 pandemic,³ have there been any **improvements** that have remained in your State in the following areas, in particular in relation to the **use of information technology**, as a result of newly adopted procedures or practices applicable to child abduction cases? In each case, please describe the tools, guidelines or protocols put in place.

- a) Methods for accepting and processing return and access applications and their accompanying documentation;

Flexibility in respect to home office and digital files is very much appreciated since it speeds up communication. Whereas in the past files were often only accepted and evaluated upon reception in classic writing, electronic communication is now not the exception but the rule.

- b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);

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

² This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction which have occurred in your State since the Seventh Meeting of the Special Commission (SC) to review the operation of the 1980 Abduction Convention and the 1996 Child Protection Convention (held from 10 to 17 October 2017) ("2017 SC").

³ This question aims to gather information about good practices that were developed in those exceptional circumstances and that will continue to be applied regardless of the pandemic.

The pandemic brought a more flexible approach of the German judiciary to the possibility of online hearings. However, with regard to the hearing of participants who are abroad, the opinion prevails that such hearings are only to be carried out according to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters or - between EU Member States - according to Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) - by way of legal assistance.

Mediation is increasingly done online. Also, the simple fact of travel restrictions and legal necessities on the other hand resulted in improved methods and much more flexibility. Of course, technical as well as legal aspects do set limits.

- c) Promoting mediation and other forms of amicable resolution;
No significant development due to Covid.
- d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;
No significant developments due to Covid. Online contact was established with regard to older children.
- e) Obtaining evidence by electronic means;
Besides from the hearing of the parties (see 2 b)), no significant developments
- f) Ensuring the safe return of the child;
Covid was frequently referred to within 1980 Hague return proceedings as a ground for non return (Art. 13 I b). In Germany, this ground was generally applied in a very restrictive manner.
- g) Cooperation between Central Authorities and other authorities;
Due to Covid restrictions there were some delays globally, but generally no major problems. In Germany there were no significant effects on the Central Authority's cooperation.
- h) Providing information and guidance for parties involved in child abduction cases;
No specific Covid developments
- i) Other, please specify.
Electronic files are currently implemented domestically on a broad scale, so further broadening of digital communication on domestic level due to Covid was helpful and positive. But, legal as well as technical issues remain.

3. Please provide the three most **significant decisions concerning the interpretation and application of the 1980 Convention** rendered since the 2017 SC by the relevant authorities⁴ in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
Please insert text here	Please insert text here	Please insert text here	The German Central Authority submits on a regular basis selected decisions by German courts concerning the 1980 HC to the Permanent Bureau for the INCADAT database (see 53 b). For

⁴ The term “relevant authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of Contracting Parties such “authorities” will be courts (i.e., judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

			significant and interesting decisions it is advised to take a look into that database.
Please insert text here	Please insert text here	Please insert text here	Please insert text here
Please insert text here	Please insert text here	Please insert text here	Please insert text here

4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

Generally speaking, the application practice of the 1980 Convention cannot be assessed without consideration of the Brussels IIb Regulation and the application of its provisions on international child abduction. Thus the revision of the Brussels IIa Regulation and the coming into force of the Brussels IIb Regulation in 2022 has been of significant importance.

Due to the outbreak of the war in Ukraine, there were an increasing number of proceedings in Germany under the 1980 HC involving Ukrainian children. German courts carefully decide on the question of the return of the children to the war zone, taking into account the respective developments of the war and the most current living conditions in Ukraine.

Issues of compliance

5. Has your State faced any particular **challenges with other Contracting Parties** to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.

- No
- Yes

Please specify the challenges encountered:

In some Contracting States the duration of the return proceedings is not in conformity with the 1980 Convention as the proceedings take too much time, sometimes years. The delays occur both at an early stage concerning the filing of the application before the competent court as well as later concerning the duration of the actual court proceedings. The fact that in some states various stages of appeal with numerous possibilities of cassation and/or of referral to a lower instance by a higher court are possible enhance this problem. Furthermore, there is no swift enforcement procedure in some states. Most of these problems seem to be systemic and allegedly mainly originate from a lack of coherent implementing legislation and a lack of understanding and/or acceptance of the ideas and aims of the 1980 Convention among judges and other institutions in those countries.

6. Are you aware of situations or circumstances in which there has been **avoidance or improper application** of the 1980 Convention as a whole or any of its provisions in particular?

- No
- Yes

Please specify:

With regard to the Art. 13 I b exception there are still countries where the courts in their decisions mix up custody proceedings and Hague return proceedings with their very restrictive exceptions.

Addressing delays and ensuring expeditious procedures

7. The 2017 SC encouraged States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / other alternative dispute resolution - “ADR” phases)⁵ in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention. Please indicate any identified sources of delay at the following phases:

Central Authority

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

[Please insert text here](#)

Judicial proceedings

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

[Please insert text here](#)

Enforcement

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

[Please insert text here](#)

Mediation / ADR

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

[Please insert text here](#)

Court proceedings and promptness

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

- No

⁵ See C&R No 4 of the 2017 SC, “The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention.”

- Yes
Please specify:
In Germany, only one appeal, to be introduced within two weeks, is possible against the first instance decision (Article 40 (2) IFLPA). To promote the swift enforcement, the enforcement has to take place ex officio, thus without a further application for enforcement to the court (Article 44 IFLPA). The concentration of jurisdiction at specialised courts as well as the regular specialised judges' conferences twice a year are also relevant.
9. If the response to question 8 above is “No”, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?
- No
Please specify:
Please insert text here
- Yes
Please specify:
Please insert text here
10. Do the courts in your State make use of direct judicial communications⁶ to ensure prompt proceedings?
- No
 Yes
Please specify:
In 2022 the two German network judges in the IHNJ dealt with 24 requests specifically concerning Hague return proceedings, 15 from Germany, 9 from outside. In 5 cases cross-border contact with the network judges in the other states took place.
One example: An English judge dealing with return proceedings asked the German network judges to provide information and assistance on the provisions of German immigration law, because he had to examine the existence of the exceptional circumstances of Art. 13 I b of the 1980 Hague Convention for his decision. The case concerned foreign children who had been living in Germany for several years and had a so-called tolerated status ("Duldung") within the meaning of German immigration law. The children had been abducted to the United Kingdom by one of their parents, as a result of which their residence status in Germany had lapsed in the view of the German Immigration Authority. In close cooperation with the Federal Office of Justice, the network judges tried for several months to obtain the issuance of entry permits for these children. Within the framework of the 1980 Hague Convention proceedings, the English court ordered the return of the children despite the children's unclear visa situation. The visas for the children were then issued by the German authorities on the basis of Section 22 of the German Residence Act, based on the Federal Republic of Germany's obligations to cooperate under international law, which arise from the 1980 Hague Convention.
11. If your State has not designated a judge to the International Hague Network of Judges (IHNJ) does your State intend to do so in the near future?
- No
 Yes
Please specify:
Please insert text here

⁶ For reference, see “Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges”.

12. Please comment upon any cases (where your State was the requested State) in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome?

Direct judicial communication is usually facilitated by the Hague Network Judges. The requests addressed towards the Network Judges encompass such diverse topics as:

- Protective measures upon return for the taking parent, e.g. arrangements for the taking parent to be admitted to a women's shelter.
- Investigation as to whether an arrest warrant is in place in the State of habitual residence.
- Questions regarding custody rights in the context of Art. 3 1980 Hague Convention and more specifically regarding existing orders transferring custody rights to one parent.
- Clarification as to whether custody proceedings have already been instituted in the State of habitual residence.
- Enquiry if a mirror order is necessary.

The requested information was often delivered within days. The communication in most cases is conducted via e-mail. In Germany the aforementioned requests are handled in close cooperation between the courts and the Central Authority. In particular, the German Central Authority and the Hague Network Judges coordinate whether the specific request is better handled via the Judges' Network or via the network of Central Authorities or if a simultaneous approach is more expedient in order to obtain the necessary information prior to the court hearing.

Case example: A German judge who had to decide in a Spanish-German abduction case contacted the German network judge because she wanted to ensure the child's safety by involving the Spanish authorities in case the child returned to Spain. The Spanish judge at the child's place of residence after the return, who was involved with the help of the Spanish network judge, provided us with the relevant regulations of Spanish law and promised the later involvement of Spanish authorities. The German colleague was thus able to order protective measures compatible with Spanish law in the German decision on the return of the child due to Art. 27 (5) Brussels IIb.

The role and functions of Central Authorities designated under the 1980 Convention

In general

13. Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in Contracting Parties with which your State has cooperated?

- No
 Yes

Please specify:

With respect to the initiation of return proceedings pursuant to Art. 7 (2) f) 1980 Convention, the time between forwarding the applications in outgoing cases to the respective CA and the actual start of court proceedings is still considerable, which may even lead to the expiration of the one year time limit as set out in Art. 12 1980 Convention.

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

- No
 Yes

Please specify:

Some Contracting States send decisions to the German Central Authority if they want a foreign decision to be formally served in Germany. From our point of view such a service of documents has to be effected through the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial documents in Civil or Commercial Matters or for EU Members States (except Denmark) through the regulation No 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The 1980 Convention does not contain a legal basis for the formal service of decisions.

Legal aid and representation

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

- No
 Yes

Please specify:

Legal aid for incoming Hague return cases is subject to a means-and-merits test in Germany. The same court competent for Hague proceedings is also responsible for deciding whether legal aid will be granted. The application form and an instruction leaflet are available in German and English. Often, it takes significant time until the applicant has completed the form and submitted the necessary documentary evidence. This can subsequently lead to a delay of the application as a whole.

As far as outgoing cases are concerned, delays sometimes occur in States where there is no State-funded legal aid system and thus an attorney needs to be found who is willing to work on a pro bono basis.

In one Contracting State, the applicant will get legal aid only if he/she is entitled to legal aid in his or her State of habitual residence. This is disadvantageous for applicants residing, e.g., in Germany because even though their income might be too high for them to be entitled to legal aid in Germany, they are unable to afford the much higher attorney's fees in that Contracting State.

16. Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States your Central Authority has dealt with, regarding the **obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?**⁷

- No
 Yes

Please specify:

In the vast majority of Contracting States the CA or other public institution do not represent the applicant in court proceedings. This makes it often more expensive and more difficult for the applicant to have his or her case heard in court because the applicant has to hire an attorney on his or her own.

⁷ See paras 1.1.4 to 1.1.6 of the C&R of the Fifth Meeting of the SC to review the operation of the 1980 Child Abduction and the practical implementation of the 1996 Child Protection Convention (30 October – 9 November 2006) (2006 SC C&R) and paras 32 to 34 of the C&R of the Sixth Meeting of the SC to review the operation of 1980 and 1996 Conventions (1-10 June 2011 and 25-31 January 2012) (2012 SC C&R), available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings”.

Locating the child

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

- No
 Yes

Please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

In some Contracting States it may take a long time to locate a child if there are no criminal proceedings pending at the same time. Sometimes the institution of criminal proceedings helps because it makes other police and criminal instruments and methods available for locating a child. Later on, however, criminal proceedings against the abducting parent in the requesting State might lead to a refusal to return the child because of an Article 13 exception. They may also be an obstacle to amicable settlements.

Voluntary agreements and bringing about an amicable resolution of the issues

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

In the context of Art. 7 (2) (c) of the 1980 Convention and Art. 25 Brussels IIb Regulation, mediation is offered by the German Central Authority to applicants on a regular basis. If applicant and respondent both show an interest in mediation, the German Central Authority is supported by third party mediators and cooperates closely with MiKK e.V., a non profit organization (see also 19.), that helps to facilitate the mediation. The German Central Authority liaises directly with the competent court in 1980 Hague Convention proceedings in order to ensure that no undue delay is caused by mediation and that the results achieved can be incorporated directly into the court order where appropriate.

Furthermore a letter asking for a voluntary return is sent to the taking parent, where desired by the left behind parent.

19. In the case that your Central Authority offers mediation services, or other alternative dispute resolution methods to bring about an amicable resolution of the issues, has your Central Authority reviewed these procedures in the light of the framework of international child abduction cases (e.g., by providing trained, specialised mediators, including with cross-cultural competence and necessary language skills⁸)?

Please specify:

MiKK e.V. (<http://www.mikk-ev.de/>), International Mediation Centre for Family Conflict and Child Abduction, advises parents from all over the world and organizes co-mediations for parents both in Germany and abroad. The mediators of the International MiKK Mediators Network are based in 30 countries offering mediations in 30 languages.

⁸ For reference, please see the recommendation in the Guide to Good Practice on Mediation, item 3.2, paras 98-105, "Specific training for mediation in international child abduction cases", available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

The co-mediators are conducted by a male and female mediator, one of whom has a legal and the other a psychological/social or education background. Furthermore, the co-mediators speak the parties' common language as well as their respective mother tongues. In addition, they come from the same countries as the parties, so have in-depth knowledge of the parties' respective culture involved. The mediators are qualified not only by their mediation training and experience, but also by a specialized advanced 50-hour Cross-border Family Mediation training (CBFM) on the complexity and the specific circumstances surrounding international child abduction proceedings and the legal issues involved.

20. Should the services mentioned in the question above not yet be provided, does your Central Authority intend to provide them in the future?

Please provide comments:
Please insert text here

21. Has your State considered, or is it in the process of considering, the establishment of a central service for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children?⁹

No
Please explain:
Please insert text here

Yes
Please explain:
In proceedings instituted by the German Central Authority, it closely cooperates with MiKK e. V. which helps to find suitable mediators, organise rooms for mediation and set up mediation as such in practical terms. All this happens in close co-ordination with the German Central Authority which in turn liaises directly with the competent court. The Central Contact Point for Cross-border Family Conflicts ("ZAnK") based at the German Branch of International Social Service within the "Deutscher Verein" exercises the function of Central Contact Point for International Family Mediation (see website <https://zank.de/>, information available in several languages).

Ensuring the safe return of children¹⁰

22. How does the competent authority in your State obtain information about the protective measures available in the requesting State when necessary to ensure the safe return of the child?

Please explain:
Generally the German Hague court would send a respective inquiry to the German Central Authority who then forwards it to the Central Authority of the requesting State. Another possibility for the court is to go - alternatively or simultaneously - through the channel of the Hague Network judges.

23. If requested as a safe return measure (e.g., in accordance with the 1996 Convention), would your Central Authority be in a position to provide, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?

No
 Yes
Please specify:

⁹ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". paras 114-117. See also 2011 / 2012 SC C&R at para. 61.

¹⁰ See Art. 7(2)(h) of the 1980 Convention.

Such a request can be handled like any other request for a report on the living situation of the child under the 1996 Convention or Brussels IIb Regulation.

Information exchange, training and networking of Central Authorities

24. Has your Central Authority shared experiences with other Central Authority(ies), for example by organising or participating in any networking initiatives such as regional meetings of Central Authorities, either in person or online? ¹¹

- No
 Yes

Please specify:

The German Central Authority regularly shares experiences with other Central Authorities. This includes bilateral meetings, EU and international projects, meetings in the framework of the EJNI and the Hague Conferences. During the pandemic most of these activities took place online whereas if possible the personal contact is considered particularly valuable.

In connection with the annual plenary meeting of Central Authorities under the Brussels IIa/b Regulations in the EJNI, the European Commission arranges for bilateral meetings between Central Authorities with a view to discussing and resolving pending cases.

Case management and collection of statistical data on applications made under the Convention

25. Has your Central Authority developed any protocols or internal guidelines for the processing of incoming and outgoing cases?

- No
 Yes

Please specify and share the relevant instruments whenever possible:

There are internal guidelines and forms for the processing of incoming and outgoing cases. They are compiled and regularly updated in an internal handbook.

26. Does your Central Authority operate a case management system for processing and tracking incoming and outgoing cases?

- No
 Yes

Please specify:

Please insert text here

27. Does your State collect statistical data on the number of applications made per year under the 1980 Convention (e.g., number of incoming and / or outgoing cases)?¹²

- No
 Yes

In case this information is publicly made available, please share the links to the statistical reports:

¹¹ See, in particular, Chapter 6.5, on twinning arrangements, of the Guide to Good Practice – Part I – Central Authority Practice, available on the HCCH website at www.hcch.net (see path indicated in note 8).

¹² In the Country Profile for the 1980 Child Abduction Convention, question No 23(e), States are asked to inform whether statistics related to applications under the Convention are publicly available. Please note that, at its meeting of 2021, according to Conclusion & Decision (C&D) No 19, the Council on General Affairs and Policy (CGAP) mandated the discontinuance of INCASTAT.

The German Central Authority collects such data with regard to applications where the German Central Authority was involved. Therefore, when looking at these figures one has to bear in mind that the data do not contain applications without the involvement of the Central Authority.

Statistics regarding the previous years are published on the CA's website:

https://www.bundesjustizamt.de/EN/Topics/FamilyMattersInternational/Custody/Statistics/Statistics_node.html

Transfrontier access / contact¹³

28. Since the 2017 SC, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier access / contact?

No

Yes

Please specify:

[Please insert text here](#)

29. Has your Central Authority encountered any problems as regards cooperation with other States in making arrangements for organising or securing the effective exercise of rights of access / contact?

No

Yes

Please specify:

In general terms, the interpretation of Art. 21 1980 Convention still seems to be inconsistent among Convention States. From a German perspective, comprehensive support is provided in cross-border access cases on the basis of Art. 21, that is applicants may seek the assistance of the German Central Authority in order to either first establish access rights or - if such rights have already been granted by the competent (judicial) authority - have these rights enforced. In either cases, a wrongful removal/retention pursuant to Art. 3 is not required. However, some Convention states interpret Art. 21 differently and provide support only when the child has been wrongfully removed/retained beforehand.

The German Central Authority may also start court proceedings in access cases albeit subject to prior authorization by the applicant pursuant to sec. 6 (2) IFLPA. In this regard, the German implementing legislation differentiates between return cases (where the German Central Authority is deemed authorised by operation of law) and access cases (where an authorization by the applicant is required).

Other Central Authorities on the contrary, provide assistance and information but are not entitled to start court proceedings.

30. Has your State had any challenges, or have questions arisen, in making arrangements for organising or securing the effective exercise of rights of access / contact under **Article 21** when the application was *not* linked to an international child abduction situation?¹⁴

No

Yes

Please specify:

[Please insert text here](#)

¹³ See C&R Nos 18-20 of the 2017 SC.

¹⁴ According to C&R No 18 of the 2017 SC, "The Special Commission agrees that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 can be presented to Central Authorities, independently of being linked or not, to an international child abduction situation."

31. In the case of access / contact applications under **Article 21**, which of the following **services** are provided by your Central Authority?

Position	Services provided
A request of assistance to organise or secure effective exercise of rights of access in another Contracting Party (as requesting State)	<input checked="" type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention <input checked="" type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State <input checked="" type="checkbox"/> 3. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide <input checked="" type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 5. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 9. Provision of regular updates on the progress of the application <input type="checkbox"/> 10. Other, please specify: Please insert text here
A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)	<input checked="" type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State <input checked="" type="checkbox"/> 2. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input checked="" type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice <input checked="" type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State <input checked="" type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 6. Regular updates on the progress of the application <input type="checkbox"/> 7. Other, please specify: Please insert text here

32. Should your State also be a Contracting Party to the 1996 Convention, are you aware of any use being made of **provisions of the 1996 Convention**, including those under Chapter V, **in lieu of or in connection with an application under Article 21** of the 1980 Convention?

- No
- Yes

Please specify:

Sometimes a report on the situation of the child, including the family history and intervention of social services or existing court orders on the custody situation, is requested under Art. 32 of the 1996 Convention.

Moreover, sometimes communication between competent authorities is established under the 1996 Convention in order to find an amicable solution before a request under Art. 21 of the Convention is made.

Special topics

Obtaining the views of a child in a child abduction case

33. When obtaining the views of a child in a child abduction proceeding in your State's jurisdiction, what are the elements normally observed and reported by the person hearing the child (e.g., expert, judge, guardian *ad litem*? (E.g., the views of the child on the procedures, the views of the child on the subject of return, the maturity of the child, any perceived parental influence on the child's statements)?

Please explain:

In child abduction cases the aim of the hearing of the child is to inform the child in a child-friendly way about the proceedings having regard to the child's age and to get to know the personality of the child, the living conditions and the view of the child on his/her situation.

The judge ascertains the nature of the child's objections to return and whether the child may be at risk, rather than a preference for the custodial parent. The judge lets the child tell about his or her life before and after return. They ask about specific past experiences. They ask the child to tell the reasons why he/she should or should not return. If the child refuses to return the judge asks for reasons and checks the child's view in case the abducting parent will also return. They try to get an impression whether the child is stressed by the situation or even directly or indirectly influenced by the abducting parent.

34. Are there any procedures, guidelines or principles available in your State to guide the person (e.g. expert, judge, guardian *ad litem*) in seeking the views of the child in a child abduction case?

- No
 Yes

Please specify:

There are no specifics for Hague cases. Family courts are under general statutory duty to hear the child in person and to obtain a personal impression of the child involved in the proceedings, see sec. 159 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The child (regardless of age) is heard by the court in person in the presence of the guardian *ad litem* for Minors – if a guardian *ad litem* is appointed. To ensure better and age-appropriate involvement of children in family court proceedings, the Act to Combat Sexualized Violence of June 16, 2021 (Federal Law Gazette I p. 1810) introduced subject-specific access requirements for family court judges. According to this, family court judges must have or acquire basic knowledge in the areas of psychology, in particular the developmental psychology of children, as well as basic knowledge in communication with children, in addition to the relevant legal knowledge (Section 23b (3) sentences 3 and 4 of the Judicial Constitution Act - GVG). Furthermore every year, several training sessions are held for judges, led by psychologists, on how to hear a child.

Article 15

35. As requesting State (outgoing applications), how often have judicial or administrative authorities in your State received requests for Article 15 decisions or determinations?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

36. As requested State (incoming applications), how often have judicial or administrative authorities in your State requested Article 15 decisions or determinations?

- Do not know
- Never
- Rarely
- Sometimes
- Very often
- Always

37. Please indicate any good practices your State has developed to provide as complete as possible information in the return applications as required under Article 8 with a view to speed up proceedings?

Please indicate:
Please insert text here

38. Considering C&R No 7 of the 2017 SC,¹⁵ what information do you suggest adding to the Country Profile for the 1980 Convention, either as requested State or requesting State in relation to Article 15?

Please insert your suggestions:
Please insert text here

Relationship with other international instruments on human rights

39. Has your State faced any challenges, or have questions arisen, in processing international child abduction cases where there was a **parallel refugee claim** lodged by the taking parent?

- No
- Yes

If possible, please share any relevant case law or materials that are relevant to this type of situation in your State or, alternatively, a summary of the situation in your State: OLG Stuttgart, decision dated 27 December 2021 (Case No. 17 UF 282/21): Both parents were granted asylum in Italy. The mother abducted the child to Germany and applied for asylum in Germany. The administrative court held that, notwithstanding the fact that the mother was a registered refugee in Italy, a deportation to Italy was unlawful because of a great risk of suffering substantive hardship on return. In the return proceeding under the 1980 Convention before the family court the taking mother claimed an exemption under Art. 13 (1) (b) of the Convention referring to the judgment of the administrative court. The family court, however, held that Art. 13 (1) (b) of the Convention is not applicable. According to the family court asylum claims and return claims are different in respect to their requirements and legal consequences and therefore the findings of the administrative court cannot be taken as a basis for the judgment in the return proceeding. Moreover, the burden of proof regarding the exceptions under Art. 13 of the Convention is solely with the taking parent. In this case, however, the taking mother did not bring enough evidence to proof that the return to Italy put her and the child at a great risk.

- Do not know

40. Has the concept of the **best interest of the child** generated discussions in your State in relation to child abduction proceedings? If it is the case, please comment on any relevant challenges in relation to such discussions.

- No
- Yes

¹⁵ See C&R No 7: “The Special Commission recommends amending the Country Profile for the 1980 Convention to include more detailed information on the Article 15 procedure. It is further recommended that an Information Document on the use of Article 15 be considered with, if necessary, the assistance of a small Working Group.”

Please provide comments:
Please insert text here

Use of the 1996 Convention¹⁶

41. If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention (please comment where applicable below):
- (a) providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**)
Please insert text here
- (b) providing for the recognition of urgent protective measures by operation of law (**Art. 23**)
Please insert text here
- (c) providing for the advance recognition of urgent protective measures (**Art. 24**)
Please insert text here
- (d) communicating information relevant to the protection of the child (**Art. 34**)
Please insert text here
- (e) making use of other relevant cooperation provisions (e.g., **Art. 32**)
Please insert text here
42. If your State is a Party to the 1996 Convention, does your State make use of the relevant cooperation provisions (e.g., Art. 32) to provide, if requested, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?¹⁷

- No
 Yes

Please specify:

See Question 32. A request for cooperation under the 1996 Convention can be made anytime before, during or after return proceedings

Primary carer and protective measures

43. Are you aware of any cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, coercive control, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State?

Please explain and provide case examples where possible:

Domestic violence or other threats to the personal security are often raised by the taking parent in return cases in the context of Art. 13 (1) b) 1980 Convention.

However, as this questionnaire - according to the introduction - does not deal with the exceptions to return under Art. 13 (1) b) 1980 Convention, it should suffice to note that the Hague return courts apply the provision in a very restrictive manner. Furthermore, a court may not refuse to return a child if it is established that

¹⁶ For this part of the Questionnaire, the [Practical Handbook on the Operation of the 1996 Child Protection Convention](#) can provide helpful guidance, available on the HCCH website at [under "Child Protection Section"](#).

¹⁷ See C&R No 40 of the 2017 SC: "The Special Commission notes that many Central Authorities may provide certain degrees of assistance (both when the 1980 Convention and / or the 1996 Convention apply), both to individuals within their own State and to foreign Central Authorities on behalf of an individual residing abroad. Requests for assistance may encompass such matters as: securing rights of access; the return of children (both when the 1980 Convention and / or the 1996 Convention apply); the protection of runaway children; reporting on the situation of a child residing abroad; [post-return reports for children returned to their habitual residence](#); the recognition or non-recognition of a measure taken abroad (advanced recognition); and, the enforceability of a foreign measure of protection." (Emphasis added.)

protective measures are in place in the State of habitual residence pursuant to Art. 27 (5) Brussels II ter Regulation.

If the return is ordered (as Art. 13 (1) b) 1980 Convention is not applicable), the return order is to be enforced proprio motu by the competent court, see sec. 44 IFLPA.

44. Would the authorities of your State consider putting in place measures to protect the primary carer upon return in the requesting State if they were requested as a means to secure the safe return of the child?

Please explain and provide case examples where possible:

Pursuant to Art. 27 (5) Brussels II ter Regulation, courts will have to consider whether protective measures are in place upon return before refusing the return based upon Art. 13 (1) b) 1980 Convention. For example the higher regional court Naumburg did not apply Art. 13 (1) b) 1980 Convention as it had been established that oversight by the Dutch guardianship authority was in place and the child could therefore be safely returned to the Netherlands (OLG Naumburg, 25 Oct 2006 - 8 WF 153/06).

However, these kinds of protective measures will have to be established by the competent authorities in the respective country of habitual residence to which the children are to be returned.

45. In cases where the return order was issued together with a protective measure to be implemented upon return, are you aware of any issues encountered by your State in relation to the enforcement of such protective measures?

- No
 Yes

Please explain and distinguish between such measures being recognised and enforced under the 1996 Convention:
Please insert text here

46. In cases where the return order was issued together with an undertaking given by either party to the competent authority of the requested State, are you aware of any issues encountered by your State in relation to the enforcement of such undertakings?

- No
 Yes

Please specify:
Please insert text here

47. If your State is a Contracting Party to the 1996 Convention, is Article 23 of that Convention being used or considered for the recognition and enforcement of undertakings given by either party while returning a child under the 1980 Convention?

- No
 Yes

Please specify:
Please insert text here

- N/A

48. In cases where measures are ordered in your State to ensure the safety of a child upon return, does your State (through the Central Authority, competent Court or otherwise) attempt to monitor the effectiveness of those measures upon the child's return?

- No
 Yes
 Please specify:
 Please insert text here

International family relocation¹⁸

49. Has your State adopted specific procedures for international family relocation?

- Yes
 Please describe such procedures, if possible:
- No
 Please describe how the authorities deal with international family relocation cases, if possible:
 Under German law a parent may only relocate with the child if this parent has either sole custody or the sole right to determine the child's place of habitual residence. Hence, if the parents have joint custody, the parent intending to relocate requires the consent of the other parent. Elsewise, this parent would require the right to determine the child's place of residence to be transferred to her/him by means of a court decision. As regards the courts decision to transfer the right to determine the child's place of residence due to a planned relocation, it has become broadly recognized in recent case law that the motive of the parent intending to relocate may not be taken into consideration by the court but instead the effect of relocation on the child's well being is the only decisive factor (see Federal Court of Justice, 28 Apr 2010 - XII ZB 81/09, Federal Court of Justice, 16 Mar 2011 - XII ZB 407/10, OLG Frankfurt, 18 Jun 2013 - 7 UF 67/12).

Publicity and debate concerning the 1980 Convention

50. Considering any potential impact on its practical operation, has your State had any recent publicity (positive or negative) or has there been any debate or discussion in your national parliament or its equivalent about the 1980 Convention?

- No
 Yes
 Please indicate the outcome of this debate or discussion, if any:
 In very few outgoing cases from Germany the applicants addressed the media which subsequently led to publications in print media or TV.
- In some of these cases the German Central Authority also received inquiries of members of the Bundestag (German parliament on federal level) or members of a Landtag (German parliaments on regional state level) who have been engaged by the applicants.
- Nevertheless, any debates focused on individuals cases, and not on the Convention or its intentions in general.

51. By what methods does your State disseminate information to the public and raise awareness about the 1980 Convention?

¹⁸ See the C&R of the 2006 SC at paras 1.7.4-1.7.5, C&R No 84 of the 2012 SC, and C&R No 21 of the 2017 SC, the latter of which says: "The Special Commission recalls the importance of securing effective access to procedures to the parties in international family relocation cases. In this regard, the Special Commission notes that: i) mediation services may assist the parties to solve these cases or prepare for outcomes; ii) the Washington Declaration of 25 March 2010 on Cross-border Family Relocation may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission recommends joining the 1996 Convention."

Please explain:

- Website of the Federal Office of Justice (in German and English,
<https://www.bundesjustizamt.de/DE/Themen/Familieinternational/Sorgerecht>
and
<https://www.bundesjustizamt.de/EN/Topics/FamilyMattersInternational/Custody>
- brochure (currently available in German and English)
- co-operation with NGOs operating helplines
- seminars/training sessions/exchange of information with/for judges, attorneys,
youth welfare officers, the police, NGOs, mediators (training of the trainers)

PART II – TRAINING, EDUCATION AND POST-CONVENTION SERVICES

Training and education

52. Please provide below details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had:

Please provide details:

In Germany, since 2001 two judicial training sessions per year are being held for the judges having specialised jurisdiction for Hague return cases (22 courts of first instance and 22 courts of appeal). In addition, 1-2 judges or persons working for Central Authorities from other countries are invited as well. Since the last Special Commission, guest speakers from Slovenia, Sweden, Italy, Scotland, Poland, Bulgaria, France, Belgium and Slovakia have participated. In spring 2023 Belgium and in autumn 2023 Greece will be present.

Under the chairmanship of the German Hague liaison judge (who is also a liaison judge in the European Judicial Network and has jurisdiction for Hague cases herself), the German judges discuss legal issues concerning the 1980 Hague Convention, the Brussels II ter Regulation, the 1996 Child Protection Convention (since 2010) and the corresponding German implementing legislation. Practical issues are equally addressed (judicial networking, information sources, cooperation with other institutions when applying these instruments). They contribute to an enhanced networking between German judges having jurisdiction for Hague cases, the development of model forms and decisions, considerable decrease of the average length of proceedings and increased cross-border judicial communications and co-operation. International networking of judges has also been favoured by the presence of the foreign judges who were often Hague liaison judges or liaison judges in the European Judicial Network (or obtained this function after the conference).

The tools, services and support provided by the PB

53. Please comment or state your reflections on the specific tools, services and support provided by the PB to assist with the practical operation of the 1980 (and 1996) Conventions, including:

- a. The Country Profile available under the Child Abduction Section, including the addition and / or revision of its questions.

The Country Profiles are extremely helpful in taking into account the specificities of the respective Convention State in return/access proceedings under the 1980 Hague Convention. For example, the Country Profiles provide for an easy way to determine if it is possible in a Convention State for a decision or other determination to be made pursuant to Art. 15 1980 Convention, that the removal / retention was wrongful within the meaning of Art. 3 1980 Convention. It would also be beneficial to have a similar tool specifically for the 1996 Hague Convention which provides more detailed information on that Convention than it is the case under the current Country Profile which focuses on the 1980 Convention.

- b. INCADAT (the international child abduction database, available at www.incadat.com).

While INCADAT has a considerable potential, it seems there is still room for its practical potential to be fully utilized. From a German perspective, the number of decisions of German Courts has increased over the past years and the CA is constantly working on further increasing the number of German decisions.

- c. *The Judges' Newsletter* on International Child Protection - the HCCH publication which is available online for free;²⁰

Whilst being a useful tool in general, it would appear favorable if the Newsletter was released more frequently so that it can be utilized to include announcements on upcoming publications, seminars etc.

- d. The specialised "Child Abduction Section" of the HCCH website (www.hcch.net);
This topic-centered approach serves a complementary function to the general approach via instruments / Conventions. In this regard, it is quite useful to access the required information more quickly.

- e. Providing technical assistance and training to Contracting Parties regarding the practical operation of the 1980 (and 1996) Conventions. Such technical assistance and training may involve persons visiting the PB or, alternatively, may involve the PB (including through its Regional Offices) organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

This is considered very helpful.

- f. Encouraging wider ratification of, or accession to, the 1980 (and 1996) Conventions, including educating those unfamiliar with the Convention(s);²¹

Please insert text here

- g. Supporting communications between Central Authorities, including maintaining updated contact details on the HCCH website or intervening to facilitate contact in cases where obstacles arise.

This is considered very helpful.

- h. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges or intervening to facilitate contact in cases where obstacles arise.

This is considered very helpful.

- i. Responding to specific questions raised by Central Authorities, Hague Network Judges or other operators regarding the practical operation or interpretation of the 1980 (and 1996) Conventions.

This is considered very helpful.

Guides to Good Practice under the 1980 Convention

54. For any of the Guides to Good Practice²² which you may have used to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State please provide comments below:

²⁰ Available on the HCCH website at under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

²¹ Which again may involve State delegates and others visiting the PB or, alternatively, may involve the PB organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the 1980 (and 1996) Conventions and participating in such conferences.

²² All Parts of the Guide to Good Practice under the 1980 Convention are available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

a. Part I on Central Authority Practice.

Part I is addressed to legislators and Central Authorities. The part addressed to Central Authorities is known to the Central Authority, and most of the recommendations made have already been implemented by the German Central Authority. A description in detail would go beyond the scope of this Questionnaire. As an example, practices have been implemented to avoid any delay by efforts on voluntary return or mediation which are carried out simultaneously to preparation of court proceedings.

b. Part II on Implementing Measures.

Part II is addressed to the legislator. The German implementing legislation in our view complies with recommendations of the Guide. In particular there is concentrated jurisdiction and limitation to one appeal.

c. Part III on Preventive Measures.

Part III has been translated into German by the German Central Authority and made available to the Hague Conference in order to post it on the HCCH website. The German CA is continuously developing together with the Hague liaison judges and other authorities involved a form for the judicial decision on prohibition for the abducting party from removal of the child from the jurisdiction and then issuing a travel ban.

d. Part IV on Enforcement.

Part IV on enforcement has been fully implemented by legislation and practice in Germany. Judges do however retain some discretion in applying the relevant domestic enforcement provisions to the individual case. Enforcement is a key topic on a regular basis at the judicial conferences for specialised Hague judges in Germany which are organised twice a year by the German Central Authority. At these conferences bailiffs and judges reported on their experiences and needs concerning the enforcement of Hague return orders. Legislatively, in difference to domestic law, Hague decisions by higher courts are enforced by these courts instead of lower enforcement courts. Enforcement is carried out ex officio.

e. Part V on Mediation

Please insert text here

f. Part VI on Article 13(1)(b)

Please insert text here

g. Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice

Please insert text here

55. How has your Central Authority ensured that the relevant authorities in your State have been made aware of, and have had access to the Guides to Good Practice?

In the course of the judges conference (see 52) the participants are made aware of the existence of and the way to access to the Guides to Good Practices.

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

Please insert text here

57. In what ways have you used the *Practitioner's Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*²³ to assist in improving the practical operation of the 1980 Convention in your State?
Please insert text here

Other

58. What other measures or mechanisms would you recommend:
- a. to improve the monitoring of the operation of the 1980 Convention;
Please insert text here
 - b. to assist States in meeting their Convention obligations; and
Trainings of the relevant stakeholders involved, particularly the judges hearing Hague cases as well as staff from Central Authorities, Youth Welfare Offices, Police, Lawyers, etc. have been proven to be an effective tool not only in Germany but also in other states to foster the meeting of Convention obligations. Those trainings were implemented in the past in the framework of projects of e.g. the EU or the German Foundation for International Legal Cooperation.
 - c. to evaluate whether serious violations of Convention obligations have occurred?
Although the Permanent Bureau has no mandate to monitor compliance it may serve as a central collecting point for individual complaints and may consider to attempt to resolve eventual disputes.

²³ The *Practitioner's Tool* is available at the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

PART III – NON-CONVENTION STATES

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

Please explain:

[Please insert text here](#)

60. Are there any States which are not Party to the 1980 Convention or not Members of the HCCH that you would like to see invited to the SC meeting in 2023?

Please indicate:

[Please insert text here](#)

The “Malta Process”²⁴

61. Do you have any suggestions of activities and projects that could be discussed in the context of the “Malta Process” and, in particular, in the event of a possible Fifth Malta Conference?

Please explain:

[Please insert text here](#)

²⁴ The “Malta Process” is a dialogue between certain Contracting Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the HCCH website at www.hcch.net under “Child Abduction Section” then “Judicial Seminars on the International Protection of Children”.

PART IV – PRIORITIES AND RECOMMENDATIONS FOR THE 2023 SC AND ANY OTHER MATTERS

Views on priorities and recommendations for the SC

62. Are there any particular issues that your State would like the SC meeting to discuss in relation to the 1980 Convention?

Please specify and list in order of priority if possible:
Please insert text here

63. Are there any proposals your State would like to make concerning any particular recommendation to be made by the SC?

Please specify:
Please insert text here

Bilateral meetings

64. Should your State be interested in having bilateral meetings during the SC meeting, please indicate, for the PB's planning purposes, an estimate of how many States with which it intends to meet:

Please insert number:
7-9

Any other matters

65. States are invited to comment on any other matters which they may wish to raise at the 2023 SC meeting concerning the practical operation of the 1980 Convention.

Please provide comments:

The following topics are inter alia considered to be worth discussing in more detail:

- Implementing measures such as limitation of remedies and concentrated jurisdiction
- Legal aid and the role of the CAs
- Agreements and arrangements
- Separation of the child from primary care taker
- Interaction between 1980 HC and 1996 HC