

GERMANY

The applications

1. The number of applications

According to the Central Authority for Germany, they received 70 incoming return and 24 incoming access applications in 1999, making a total of 94 incoming applications. Additionally, they made 103 outgoing return and 13 outgoing access applications in that year. Altogether, therefore, the Central Authority for Germany handled 210 new applications in 1999. This means that, in terms of numbers, the German Central Authority was, globally, one of the busiest Central Authorities in 1999.¹

2. The Contracting States which made the applications

(a) Incoming return applications²

Requesting States

	Number of Applications	Percent
USA	24	34
UK - England and Wales	11	16
France	6	9
Italy	4	6
Portugal	3	4
South Africa	3	4
Australia	2	3
Canada	2	3
Israel	2	3
Norway	2	3
Austria	1	1
Czech Republic	1	1
Denmark	1	1
Netherlands	1	1
Spain	1	1
Venezuela	1	1
Hungary	1	1
Malta	1	1
Monaco	1	1
Poland	1	1
Uruguay	1	1
Total	70	100

¹ The Central Authority for England and Wales was the busiest Central Authority, handling 329 new applications, with NCMEC, who acts as the US Central Authority for incoming applications, receiving 254 new applications, and the US State Department which handles outgoing applications, making 212 applications in 1999.

² The Convention was not in force between Germany and Malta, and Germany and Uruguay and both applications from these countries were therefore rejected, see below.

Half of the applications for return were made by the two busiest Central Authorities, namely the USA and England and Wales, but with the former alone making a strikingly high proportion, (34%). It seems likely that these numbers are in part accounted for by the presence of American and British forces being stationed in Germany. The next highest number of applications were received from other European States, namely, France and Italy.

(b) Incoming access applications

Requesting States

	Number of Applications	Percent
Italy	4	17
France	3	13
Spain	3	13
UK- England and Wales	3	13
Denmark	2	8
Portugal	2	8
USA	2	8
Czech Republic	1	4
Luxembourg	1	4
Switzerland	1	4
Hungary	1	4
Poland	1	4
Total	24	100

21% of all applications received by Germany were for access, compared with 17%, globally.

Germany received the highest number of access applications from Italy from which incidentally, it received the same number of applications for return. Although the USA made the greatest number of return applications, they made relatively few access applications, 2, or 8%, of all those received.

Combining return and access applications, the top 5 Contracting States which made applications to Germany were:

1. USA 26
2. UK – England and Wales 14
3. France 9
4. Italy 8
5. Portugal 5

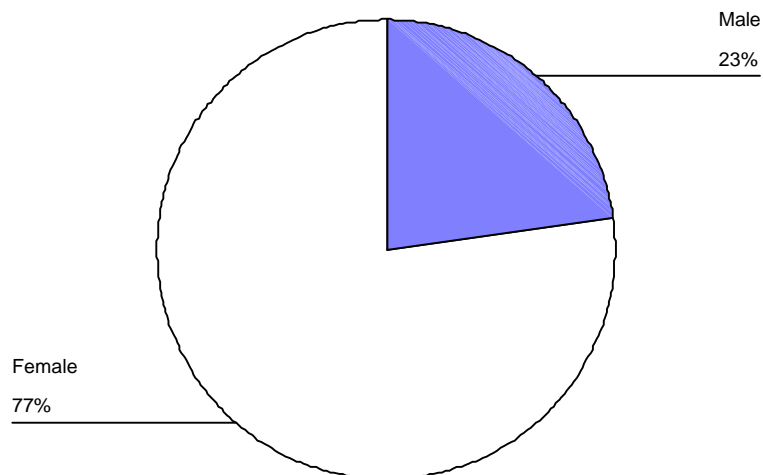
The taking person / respondent

3. The gender of the taking person / respondent

(a) Incoming return applications

Gender of the Taking Person

	Number	Percent
Male	16	23
Female	54	77
Total	70	100

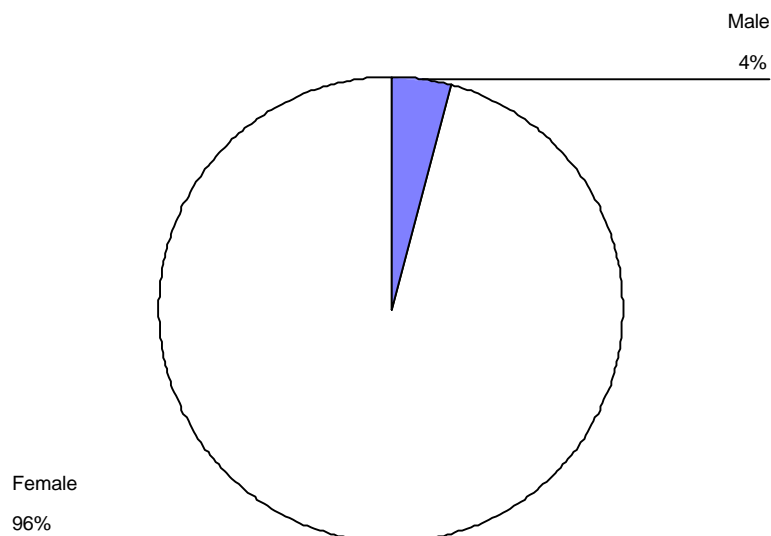


The above chart and table show that 77% of taking persons involved in incoming return applications to Germany were female, which is higher than the global norm of 69%. Interestingly, in outgoing applications from Germany, only 41% of taking persons were female.

(b) Incoming access applications

Gender of the Respondent

	Number	Percent
Male	1	4
Female	23	96
Total	24	100



Like the global norm, a greater proportion of respondents than taking persons were female. Indeed in the access applications made to Germany, all but one of the respondents were female, which at 96% was higher than the global norm of 86%.

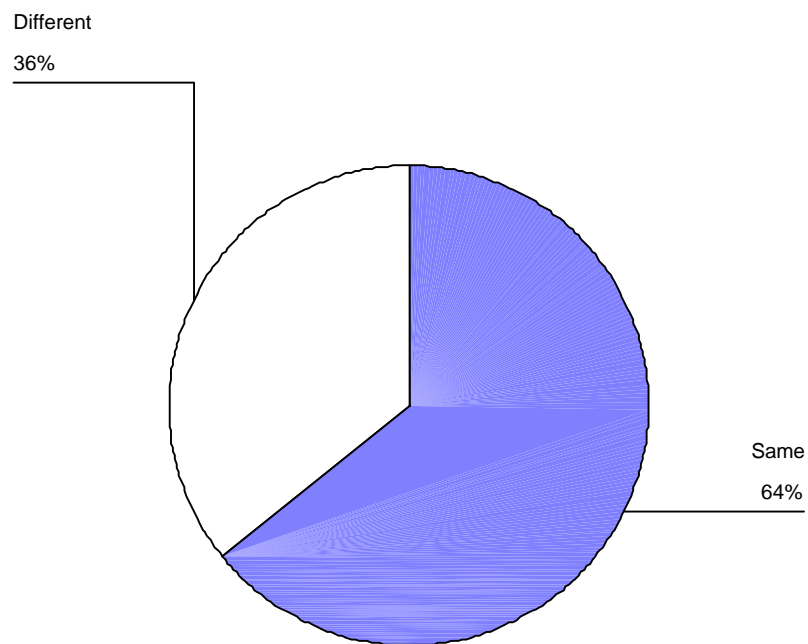
4. The nationality of the taking person / respondent

(a) *Incoming return applications*³

Taking Person Same Nationality as Requested State

	Number	Percent
Same Nationality	43	64
Different Nationality	24	36
Total	67	100

³ Additionally, in 3 applications, the nationality of the taking person was not stated.



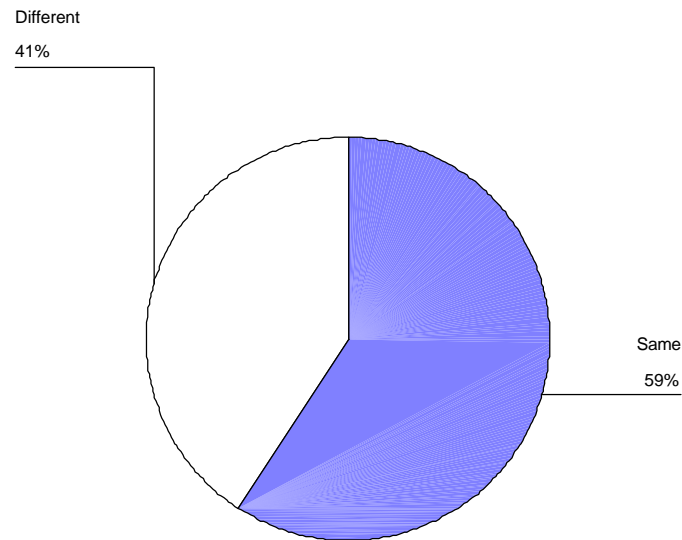
A considerably higher proportion of taking persons, 64%, had the nationality of the requested State, than the global norm of 52%.

(b) Incoming access applications⁴

Respondent Same Nationality as the Requested State

	Number	Percent
Same Nationality	13	59
Different Nationality	9	41
Total	22	100

⁴ Additionally, in 2 applications, the nationality of the respondent was not stated.



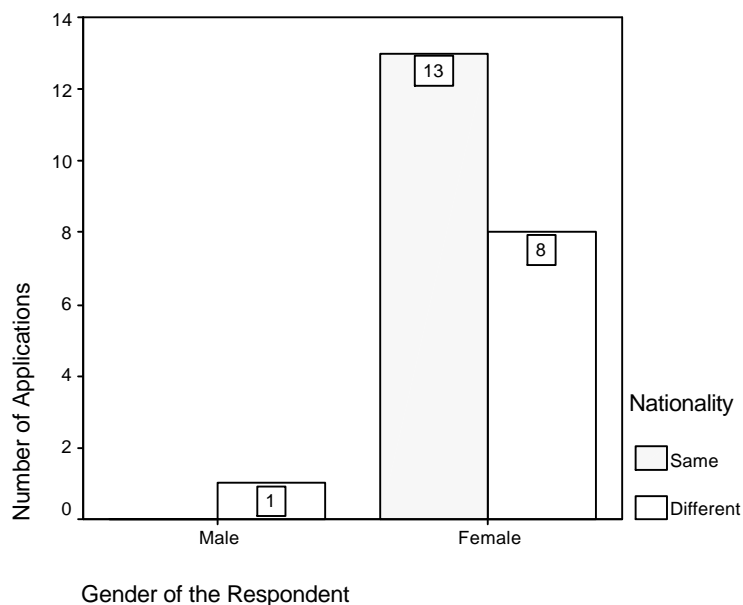
As the above table and chart show, 59% of respondents were German nationals, which again is significantly greater than the global norm where 40% of respondents had the nationality of the requested State.

5. The gender and nationality of the taking person / respondent combined

(a) Incoming return applications



Our global analysis found that 53% of males and 52% of females had the nationality of the requested State. For applications to Germany, slightly fewer males, 47%, and significantly more females, 69%, were German nationals.

(b) Incoming access applications

Like the applications for return, a high proportion of female respondents, 62%, were German nationals, which again is significantly greater than the global norm, where 40% of females had the nationality of the requested State.

The children**6. The total number of children**

There were at least⁵ 100 children involved in the 70 return applications and 30 children involved in the 24 access applications. Altogether, therefore, at least 130 children were involved in new incoming applications received by Germany in 1999.

7. Single children or sibling groups**(a) Incoming return applications⁶****Single Child or Sibling Group**

	Number	Percent
Single Child	44	64
Sibling Group	25	36
Total	69	100

⁵ There was one application where the number of children was not stated, however the application must have involved at least 1 child and this figure has been added to the known data to produce the figure quoted in the text.

⁶ Additionally, as stated above at note 5, in 1 application the number of children involved was not stated.

Number of Children

	Number	Percent
1 Child	44	64
2 Children	21	30
3 Children	3	4
4 Children	1	1
Total	69	100

Globally, 63% of applications concerned a single child, 30% of applications involved 2 children, 5% 3 children, and 1% 4 children. For applications to Germany these proportions were virtually identical at 64%, 30%, 4% and 1%, respectively.

(b) Incoming access applications

Single Child or Sibling Group

	Number	Percent
Single Child	18	75
Sibling Group	6	25
Total	24	100

Number of Children

	Number	Percent
1 Child	18	75
2 Children	6	25
Total	24	100

Three quarters of applications concerned a single child, compared with the global norm of 69%. No applications were made involving more than 2 children.

8. The age of the children

(a) Incoming return applications⁷

Age of the Children

	Number	Percent
0-4 years	43	44
5-9 years	39	40
10-16 years	16	16
Total	98	100

⁷ Additionally, the ages of at least 2 child were not stated.

Compared with the global norms, there was a slightly higher proportion of children aged between 0 and 4 years, 44% as against 38%, and a lower proportion of children aged between 10 and 16 years, 16% as against 21%.

(b) Incoming access applications

Age of the Children

	Number	Percent
0-4 years	6	20
5-9 years	16	53
10-16 years	8	27
Total	30	100

The age of the children was similar to the global norms, where 21% of children were aged between 0 and 4 years, 50% were aged between 5 and 9 years, and 29% were aged between 10 and 16 years.

9. The gender of the children

(a) Incoming return applications⁸

Gender of the Children

	Number	Percent
Male	54	56
Female	43	44
Total	97	100

More male children, 56%, were involved in the applications than female children, which is similar to the global norm of 53% male children.

(b) Incoming access applications

Gender of the Children

	Number	Percent
Male	15	50
Female	15	50
Total	30	100

The gender of the children was split evenly, which is identical to the global norm.

⁸ Additionally, the genders of at least 3 children were not stated.

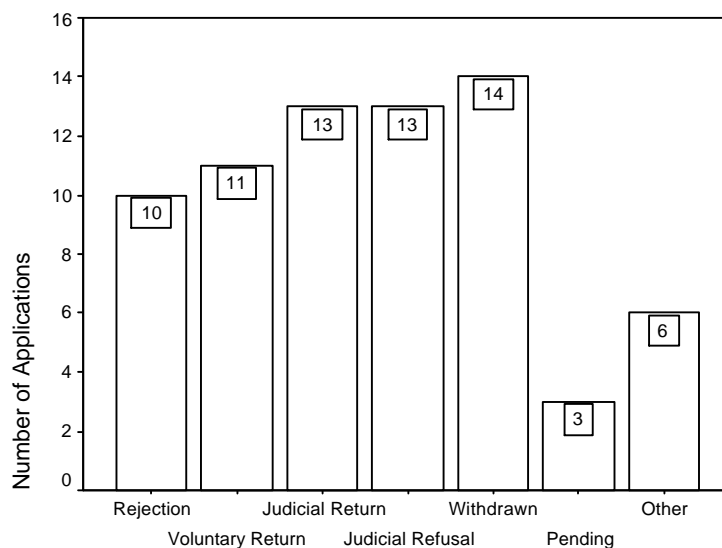
The outcomes

10. Overall outcomes

(a) Incoming return applications

Outcome of Application

	Number	Percent
Rejection	10	14
Voluntary Return	11	16
Judicial Return	13	19
Judicial Refusal	13	19
Withdrawn	14	20
Pending	3	4
Other	6	9
Total	70	100



Outcome of Application

Compared with a global norm of 50%, only 35% of applications to Germany resulted in the child's return, either voluntarily or by judicial order, (although an additional 3 cases, 4%, concluded with access either being ordered or agreed). More cases (19%) were judicially refused, compared with the global norm of 11%. Strikingly, there were equally as many judicial refusals as there were judicial return orders, whereas globally, 74% of cases which went to court resulted in a return order being made. There was a notably high proportion of withdrawals, 20% compared with a global norm of 14%. At 14%, the rejection rate was also higher than the global norm of 11%. 3 cases were still pending at 30th June 2001, which may give pause for thought.

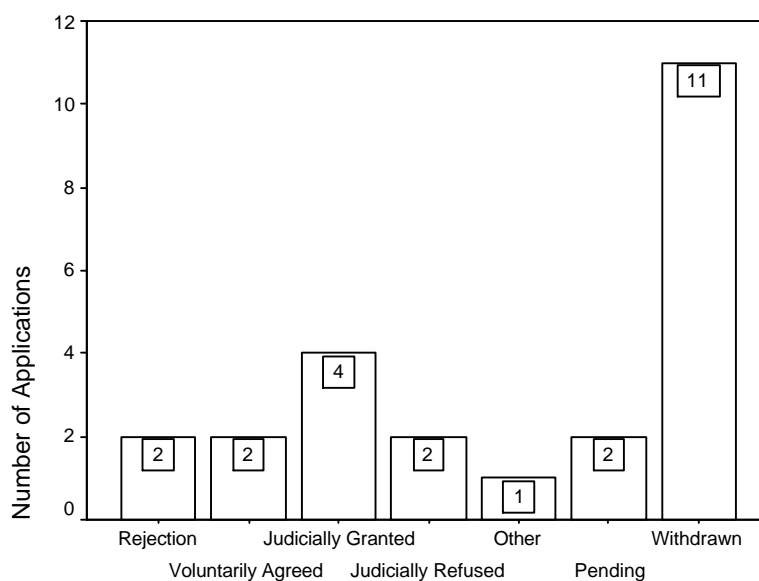
The 'other' outcomes were: in 3 applications access was either ordered or agreed; in one application, the mother, the taking person, agreed to visit the father and discuss access; one application was not actually formally made as the father did

not have rights of custody but was seeking advice from a lawyer about the return of the child. The final reason was not stated.

(b) Incoming access applications

Outcome of the Application

	Number	Percent
Rejection by the Central Authority	2	8
Access Voluntarily Agreed	2	8
Access Judicially Granted	4	17
Access Judicially Refused	2	8
Other	1	4
Pending	2	8
Withdrawn	11	46
Total	24	100



Outcome of Applications

25% of applications concluded with the applicant gaining access to the child, either as a result of a voluntary agreement or a court order, which was considerably below the global norm of 43%. Globally, 18% of applications concluded in a voluntary agreement, whereas only 8% of applications to Germany so concluded. Strikingly, 11 of the 24 applications, 46%, resulted in a withdrawal compared with a global norm of 26%. In 1 of the pending cases access had been granted pending the court hearing. The other case was still pending at 30th June 2001.

The 'other' outcome was that the case was closed as a Hague application, as access was granted by the domestic court in separate proceedings.

11. The reasons for rejection

(a) Incoming return applications

Reason for Rejection by the Central Authority

	Number	Percent
Child over 16	0	0
Child Located in Another Country	3	33
Child Not Located	0	0
Applicant Had No Rights of Custody	0	0
Other	6	67
More than one reason	0	0
Total	9	100

Six applications were rejected for 'other' reasons, namely, in 2, the Convention was not in force between Germany and the requesting State; in another 2 there were previous applications concerning the same parties which were still open, (one of these applications, was made directly to the court, under Article 29); another was rejected because there was no wrongful removal; and in the remaining case the reason for rejection was not stated.

(b) Incoming access applications

One application was rejected because the child was located in another country. The second rejection was because the respondent had previously started domestic judicial proceedings, which resulted in the applicant being precluded from having access to the child. The requesting Central Authority then withdrew the application, saying that there was no legitimate interest in the applicant taking Hague Proceedings.

12. The reasons for judicial refusal

(a) Incoming return applications

Reason for Judicial Refusal

	Number	Percent
Child Not Habitually Resident in Requesting State	0	0
Applicant had No Rights of Custody	0	0
Article 12	4	31
Article 13 a Not Exercising Rights of Custody	2	15
Article 13 a Consent	1	8
Article 13 a Acquiescence	1	8
Article 13 b	3	23
Child's Objections	1	8
Article 20	0	0
More Than One Reason	1	8
Other	0	0
Total	13	100

In the decision where the judicial refusal was based on 'more than one reason', these reasons were that the applicant did not have rights of custody and that the child was not habitually resident in the requesting State.

Although the reasons for judicial refusals were spread across those allowed under the Convention, Article 12 and Article 13 b were most frequently relied upon. The child whose objections were relied upon as a basis for refusal was aged between 13 and 16 years.

13. The gender of the taking person and the reasons for judicial refusal

(a) Incoming return applications

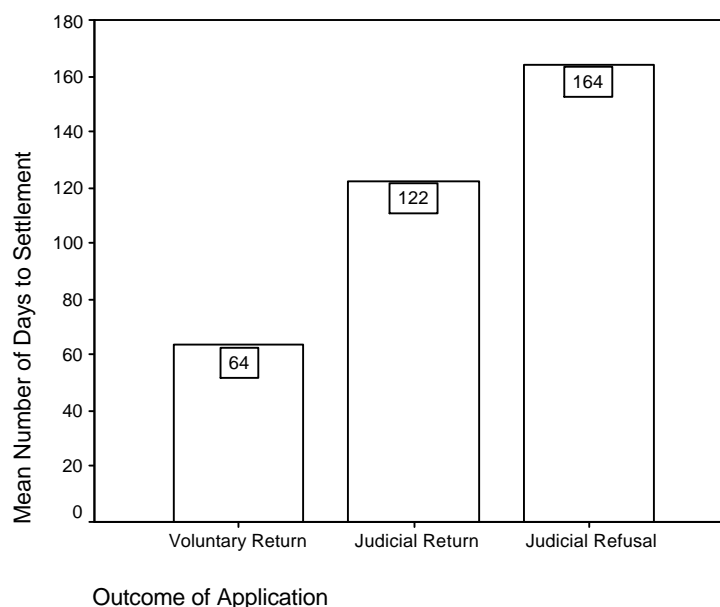
Count

	Gender of the Taking Person		Total
	Male	Female	
Article 12		4	4
Article 13a Not Exercising Rights of Custody		2	2
Article 13a Consent		1	1
Article 13a Acquiescence		1	1
Article 13b		3	3
Child's Objections 13-16 years	1		1
More than one reason		1	1
Total	1	12	13

Although, overall, 77% of taking persons, in applications to Germany were female, in 12 out of the 13 applications (92%) that were judicially refused, the taking person was female.

14. The time between application and outcome

(a) Incoming return applications



Voluntary returns were resolved in a mean average of 64 days, which was faster than the global norm of 84 days. Judicial decisions, however took longer, 122

days for a judicial return and 164 days for a judicial refusal, compared with the global norms of 107 days and 147 days respectively.

	Outcome of Application		
	Voluntary Return	Judicial Return	Judicial Refusal
Mean	64	122	164
Median	24	46	144
Minimum	7	1	31
Maximum	305	547	445
Number of Cases	11	13	10

The table above shows the mean and median number of days taken to reach conclusion and the minimum and maximum number of days. It can be seen that there were some slow cases, one judicial return took 547 days, and one judicial refusal took 445 days. Conversely, there were also some faster cases, one judicial return was decided within 1 day, and one voluntary return was made within 7 days.

(b) Incoming access applications

Timing to Voluntary Settlement

	Number	Percent
0-6 weeks	0	0
6-12 weeks	0	0
3-6 months	1	50
Over 6 months	1	50
Total	2	100

Timing to Judicial Decision

	Number	Percent
0-6 weeks	1	14
6-12 weeks	0	0
3-6 months	0	0
Over 6 months	5	86
Total	6	100

Like the global norms, access applications generally took longer to be concluded, with 5 of the 6 judicial decisions and one of the 2 voluntary settlements taking over 6 months. Globally, the proportion of judicial decisions taking over 6 months was 71% compared with 86% in Germany.

15. Appeals

(a) Incoming return applications

Four judicial decisions were made at appellate level, 2 resulted in an order for return, and 2 in a refusal to return. The judicial returns took an average of 397

days; which was significantly slower than the global norm of 208 days. Ironically, however, the judicial refusals were significantly faster taking on average 110 days as against a global norm of 176 days. It should be remembered that one application is still awaiting judgement from the appellate court, which has indicated that it has considered Article 12. The mean number of days for a judicial decision will be increased when this judgment is given.

2 return applications, are waiting for a hearing at the appellate court.