

The role and functions of Central Authorities

Re question 1:

In general, there are no difficulties in the communication between German and foreign Central Authorities.

Occasionally problems arise when changes in the addresses, telephone and fax numbers, e-mail addresses or contact persons of a particular Central Authority are not announced in a timely manner, or are not published in a timely manner in Hague Conference documents.

To ensure rapid and effective communication, the German Central Authority communicates for the most part via e-mail, telephone and fax. Apart from that, original applications and their necessary enclosures are transmitted by post.

Re question 2:

There are considerable problems in the cooperation with Serbia to the extent that applications, appeals and status enquiries in connection with proceedings originating in Germany are not answered in a timely manner or receive no answer at all.

Re question 3:

The German Central Authority maintains a website that can be accessed at http://www.bundeszentralregister.de/hkue_esue/index.html. This address is also listed on the Hague Conference website. In 2006, the Central Authority reissued its brochure, "International Proceedings in Parent and Child Matters – Provisional Information on the Return of Abducted Children and on Access and Custody Decisions."

a. Information on Contracting States, including information on the entry into force in relation to the Federal Republic of Germany, is provided both in the brochure and on the website.

b. The measures that the Central Authority can take to locate the whereabouts of a child are governed by section 7 of the German law on international family law procedure (*Internationales Familienrechtsverfahrensgesetz*, IntFamRVG). The text of the IntFamRVG is available both on the website and in the brochure.

c. The contact information for the Central Authority (address, telephone and fax numbers, e-mail address) is available both on the website and in the brochure. The addresses of the

Central Authorities of other Contracting States can be accessed through a link to the Hague Conference's website and are also printed in the brochure.

d. An authorisation form is available on the website of the Central Authority in both a German/English/French version and a Spanish/German version.

The Request for **Return** forms are available on the website in the following languages: German, Bosnian, Czech, Danish, Dutch, English, French, Greek, Hungarian, Italian, Norwegian, Polish, Portuguese, Romanian, Russian, Serbo-Croatian, Spanish, Swedish, and Turkish.

Request forms concerning the exercise of **access** rights are available on the website in the following languages: German, Danish, Dutch, English, French, Italian, Macedonian, Polish, Portuguese, Spanish, Swedish, and Turkish.

e. The form entitled "Declaration of personal and economic circumstances," which must be submitted when applying for legal aid, is available in bilingual form (German/English) on the website. In addition, an instructions leaflet for filling in this declaration is available on the website in German and English.

Re question 4:

In general, in parallel with the submission of a return application to the competent court, the Central Authority requests the respondent to return the child voluntarily. This practice has the result that, in the majority of cases, parents who decide to return a child voluntarily actually put their decision into action. In such cases the court proceedings is then declared closed.

If it becomes evident from the described circumstances of a particular case that a voluntary return can be achieved without initiating court proceedings, the Central Authority departs from this practice upon consent of the requesting parent and attempts to reach an amicable resolution, where appropriate with the involvement of a youth welfare office or other competent authorities (e.g., the German branch of the International Social Service, ISS) or persons (e.g., lawyers). Agreements that, where appropriate, can be confirmed by a court help to ensure the return of a child or access rights.

In addition, efforts are increasingly being made to encourage the affected parties to engage in mediation. It is important to ensure, however, that the abducting parent does not use such mediation efforts as a means to delay the proceedings. One possibility for preventing such a

delay is to seek to integrate the mediation process into the court proceedings. For this reason, the German Central Authority suggests in its requests that the court examine whether mediation is suitable for that particular case.

Re question 5:

The German Central Authority has good contacts with other Central Authorities, and these contacts are used for the sharing of expertise. The following meetings can be mentioned as examples:

The German and U.S. Central Authorities regularly engage in bilateral expert talks. In addition, the German Central Authority has met with both the French and Swiss Central Authorities to share expertise.

Another exchange of experience took place with Bulgarian lawyers during preparations for Bulgaria's accession to the Hague Convention. A consultation also took place with Croatian lawyers working on cases under the Hague Convention.

In this context, it is worth mentioning that two European-level meetings among the Central Authorities designated under the so-called Brussels IIa Regulation took place in 2006 (in Rome in February and in Brussels in June). In most EU Member States, these Central Authorities are identical to the Central Authorities designated under the Hague Convention.

The sharing of practical expertise is viewed as very important and constructive. Personal contacts serve to enhance mutual trust in the efforts of the respective Central Authorities.

Court proceedings

Re question 6:

Since 1990, proceedings under the Hague Convention on the Civil Aspects of International Child Abduction have been assigned to special family courts. There are now only 22 family courts, in contrast to about 600 family courts in the past. The concentration in 22 family courts makes it possible for the family court judges who deal with abduction cases to develop a specialisation in this subject-matter. In the past few years, the Federal Ministry of Justice has held two special seminars annually for family court judges who deal with abduction cases under the Hague Convention, the most recent of which took place in September 2006 in Brühl, near Bonn.

Re question 7:

- a) The specialised courts in Germany which deal with these cases are compelled to use the most expeditious procedures available (Article 2 of the Hague Convention) and to act expeditiously in proceedings for the return of children (Article 11 of the Hague Convention). In the training courses for judges specialised in Hague Convention cases, the necessity of expeditious proceedings and of a decision being given within six weeks of receipt of the application are both issues dealt with during the course.

In relations with the other Member States of the European Union, the Hague Convention is applied first. However, since 1 March 2005, the Hague Convention has been supplemented and put into more precise terms by the "Brussels IIa" Regulation, although this does not apply to relations with Denmark. Pursuant to Article 11 (3) of the Brussels IIa Regulation, a court must act expeditiously in proceedings on the application for return of a child, using the most expeditious procedures available in national law. The court must, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

The Act on International Family Law also entered into force in Germany on 1 March 2005. Pursuant to Article 38 of this Act, the court must treat proceedings for the return of a child under the Hague Convention as a matter of priority at all court instances. The court must take all necessary steps to expedite the proceedings so that a decision can be issued within six weeks. This means that, in a case of child abduction, the court must schedule and adjudicate that case before others.

Attention must also be drawn to Article 11 (2) of the Brussels IIa Regulation, which states that when Articles 12 and 13 of the 1980 Hague Convention are applied, it must be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

- b) Another subject which is emphasised during the training of family court judges specialised in Hague Convention cases is the fact that the object of the Hague Convention is to secure the prompt return of children wrongfully removed to any Contracting State. It is also pointed out during such courses that, within the framework of a return decision, the aim is not to consider whether the return is in the child's best interests or to make any decision as to custody. The decision on custody is a matter solely for the court competent at the child's place of habitual residence before the abduction.

Re question 8:

If the applicant fulfils the prerequisites for receiving legal aid, the Central Authority submits a request to the competent court – if court proceedings to secure the return of the child are necessary – that the applicant party be granted legal aid and assigned competent legal counsel. However, the precondition for filing such an application is that the required declarations and proof of the applicant's need have been submitted, and that the application has a sufficient prospect of success. The Central Authorities of all Contracting States were informed of this procedure in a general written communication, and the necessary documents for applying for legal aid were transmitted accordingly. The latter can be downloaded from the website of the Central Authority (see above answer to question 3e).

Delays can arise, for example, when applicants fail to submit the necessary documents in a timely manner.

Re Q 9:

In accordance with section 50 d of the Act on Matters concerned with Non-contentious Litigation (*FGG*), the family court judge is obliged to hear the child in person if matters of custody or access are contentious between the parents. In accordance with the case-law of the German Federal Constitutional Court, as independent holders of the right of personality and of human dignity, and on the basis of the principle of the right to a hearing in court, children must be enabled in custody and access proceedings to make recognisable to the court their personal relationships with the other family members. Some of the case-law additionally refers in this respect to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as to Article 12 § 1 of the UN Convention on the Rights of the Child of 20 November 1989. As a rule, children are heard from the age of between four and six. The hearing should be held in a child-friendly manner, and should take place in an environment suited to children; the larger courts in particular have set up "playrooms" for this purpose in which children can be questioned. Many family court judges avail themselves of the possibilities offered by the administration of justice to undergo further training in order to obtain special knowledge and practical skills in communication with children, as well as with parents who are in separation and divorce conflicts.

In cross-border cases covered by the Hague Child Abduction Convention and the Brussels II a Regulation, the judge must also hear the children in question in person under such conditions. If the parent who has been left behind abroad can also attend the child's hearing, this presents an opportunity which many judges use in order to initially re-establish contact

between the child and the parent who has been left abroad after a longer period without contact.

Most hearings commence with an explanation for the child that the child can talk about him/herself, and if he/she so desires and is able to do so, can present his/her view and opinion of the questions to be decided on. At the same time, it is made clear to the child that he/she is not to decide on the contentious questions, but that this is a matter primarily for the parents; in the event of the parents not reaching a mutual solution in the best interests of the child, the decision would be taken not by the child, but by the court.

The essential contents of the hearing are communicated to the parents after the child has been heard. Both parents may make a statement on this.

Re question 10:

Statistics from the years 2000-2006 reveal no such cases.

Legal issues and interpretation of key concepts

Re question 12:

The Federal Constitutional Court ruled by order of 18 July 2006 that the courts are obliged to appoint a *curator ad litem* for the child already in the family-court return proceedings in accordance with the Hague Child Abduction Convention in order to assert his/her interests if it is doubtful whether the parents will really pursue the proceedings in the interest of the child.

This is likely to lead to *curators ad litem* being appointed more frequently in future in proceedings in accordance with the Hague Child Abduction Convention. A certain familiarisation process has been underway since 2004 to introduce *curators ad litem* in Germany to the legal and psychological specialities of proceedings in accordance with the Hague Child Abduction Convention and the Brussels II a Regulation.

Legal issues and interpretation of key concepts

Re Q 13:

b) In its order of 15 February 2006 (1 WF 231/05), Frankfurt am Main Higher Regional Court dealt in detail with the case-law of the courts of various common law countries, and reached the conclusion that habitual residence within the meaning of Article 3 (a) and Article 4 of the Hague Child Abduction Convention should be defined by way of an

autonomous and internationally uniform interpretation of the term and is exemplified by a certain duration and regularity of residence, as well as by the existence of ties to the environment which justify the presumption of the social integration of the person in question at their place of residence. A legally-defined or natural intention to stay is however not required.

The ruling has been forwarded to the Hague Conference for publication in INCADAT.

d) Hamm Higher Regional Court had to rule on 23 January 2004 (11 UF 185/03) on facts in accordance with which the father, who had joint custody together with the mother, had for roughly 15 months made completely inadequate use of his right of access to his son which had been granted him by a court order. The court ruled in this case that this conduct was tantamount to a waiver of his right of custody, so that return in accordance with Articles 12 and 3 of the Hague Child Abduction Convention was ruled out after the mother had moved with the son from Poland to Germany and had refused to return the son to Poland.

h and i. Since the Special Commission of 2001, in connection with the concentration of Hague Convention cases within a limited number of courts as well as the ongoing continuing education of judges, Article 13 (1) *b*) has been applied in an increasingly uniform manner, i.e., there has been a consistent implementation of the guidelines formulated by the Federal Constitutional Court that call for a stringent and restrictive application of this Article.

Direct international judicial communication

Re Q 14:

Sections 15 and 38 of the Act on International Family Law (*Gesetz zum Internationalen Familienrecht*) of 26 January 2005 extends the legal foundation for direct international judicial communication. Since the principle of ex officio judicial investigation applies to such proceedings, prior consent of the parties to direct judicial communication is not required, but is definitely expedient. If a party is not previously informed and/or is not present during the direct communication, the judge is obliged by the principle of the right to a hearing in court and by the principle of a fair trial to inform the parties of the content of the communication – as a rule in writing – before being able to base a ruling on the results of the direct communication.

It is explicitly recommended at seminars which have been organised for specialised family court judges to implement direct judicial communication, in particular if – as in the case of the Hague Child Abduction Convention – the proceedings are urgent or where factual or legal issues have not been clarified which are material to the decision to be taken. It is intended for the next judges' seminars to try out implementation of direct cross-border judicial communication by means of role-plays.

An explicit regulation of direct judicial cooperation is contained in Article 15 § 6 of EU Regulation No. 2201/2003 of 27 November 2003 (Brussels II a Regulation).

Immigration/ asylum/ refugee matters

Re questions 15-18:

It is evident from the citizenship of the parties involved that the proportion of refugee, immigrant, and asylum-seeking families is increasing. In the past, these constellations have given rise to problems involving visas and other issues. In addition, questions of applicable law have arisen with regard to marriages that have been concluded on an exclusively religious basis.

In its decision of 23 January 2006 (Ref.: 2 BvR 1935/06), the Federal Constitutional Court ruled that immigration policy concerns can be superseded by Article 6 para. 1, in conjunction with Article 6 para. 2, of the Basic Law (protection of the family).

Criminal proceedings

Re question 19:

In general, it is not conducive to the in or out of court clarification of a particular matter if a criminal proceeding is pending during the course of a Hague Convention proceeding.

If criminal charges are pending against the abducting parent in the country to which the child is to be returned, this often has negative consequences for the overall course of proceedings. On the one hand, one parent is "criminalised" by the other, which generally does not lead to the re-establishment of relations that facilitate an amicable return (voluntary return, willingness to engage in mediation). On the other hand, an active arrest warrant can cause considerable problems for the abducting parent during the return process. There is a risk that the returning parent will be taken into custody upon entry and that the child will be removed from him or her. The status quo ante that the Hague Convention is meant to restore would then be shifted to the disadvantage of the abducting parent. The difficulty arises that

either a criminal complaint must be withdrawn or the abducting parent must be guaranteed exemption from punishment.

Various measures have proven successful in preventing an arrest during the return process. These include the possibility of coordination between the German judge and his foreign colleague (either directly or with the Central Authority's assistance), communication between the German judge and the responsible law enforcement authorities abroad (either directly or with the Central Authority's assistance), the obtaining of proof that coercive measures have been withdrawn or will not be applied, and safeguards through so-called mirror orders.

Criminal proceedings may be expedient only in a limited number of specific circumstances, for example in cases when an abducted child's whereabouts in a particular country are completely unknown and the extensive instruments available to search operations conducted under criminal law may lead to the discovery of the child's location abroad.

Mediation

Re question 20:

In January 2006 a pilot project to provide mediation in Hague Convention cases before German courts was initiated by the Federal Ministry of Justice. The aim is that already the Central Authority inform the parties about the possibility of pursuing mediation. It is intended that, in appropriate cases, the court will offer the parties the option of pursuing mediation within two weeks. The aim in such cases would be, if possible, to achieve a binational mediation, i.e. for the mediation to be conducted by a team of mediators of whom one is from the same country as one parent and the other is from the same country as the other parent, and of whom one is male and one is female. If it is not possible to recruit a mediator of the foreign nationality at short notice, it may be sufficient if a member of the embassy or consulate staff, or a person of the same nationality as the foreign parent who enjoys that parent's confidence, participates in the mediation. It would also be desirable if one mediator were a lawyer and the other from a psychosocial profession.

In addition, in February 2006 a German-U.S. binational mediation project for abduction, custody and access cases was launched. It is intended that in binational conflicts of this nature concerning parent and child matters, the parents will be offered the opportunity to pursue binational mediation in Germany or in the USA led by a team consisting of one German and one American mediator, of whom one should also be male and the other female.

One requirement is that both the German and the U.S. mediator are familiarised with the other legal system and the cultural differences and particular cultural traits of the foreign country. To ensure that mediation is made available as inexpensively as possible, U.S. mediators living in Germany are currently being trained together with German mediators. On 23 and 24 October 2006, the first joint training session for German mediators and U.S. mediators living in Germany took place. A course for U.S. mediators and German mediators resident in the USA is planned to take place in spring 2007.

Re question 21:

In order to ensure that mediation does not delay proceedings in Hague Convention cases, special preparatory efforts have to be made regarding the provision and conducting of mediation. Initial information about mediation can already be provided when the application is served by the Central Authority. In addition, the court can enquire with the parties when sending the summons to the hearing as to whether they are willing to engage in mediation. At the latest at the first hearing before the court the parties can agree on participating in mediation. Mediators involved in this project must declare beforehand that they will be able to be available for mediation within a period of ten days. The fact that mediation is conducted without delay means that it is also possible to prevent a situation where one party is only willing to participate in mediation in order to prolong the proceedings instead of with the aim of coming to a mutual agreement.

Re question 22:

Mediation can be a suitable means of inducing parents to work out a common solution to the issue of the future place of residence of the children and a strategy regarding access in those cases where the parents have already separated and there is a risk of abduction. Where parents enter into mediation at an early stage and come to an agreement, it can be avoided that one of the parents abducts the child. This also means that complex, time-consuming and cost-intensive court proceedings can be avoided.

Mediation can also serve as an effective instrument after an abduction has taken place to help resolve the conflict between the parents as extensively and finally as possible. Unlike in proceedings concerning Hague Convention cases, during mediation questions of parental custody, access and other issues such as maintenance, schooling, the children's language development, or contact with other relatives and friends can be addressed and resolved. In this way, prolonged and expensive court proceedings can be avoided.

Training and education

Re Qs 23 and 24:

The Federal Ministry of Justice has implemented two special seminars per year since 2003 for judges dealing with abduction cases in accordance with the Hague Child Abduction Convention and with cases in accordance with the Brussels II a Regulation. The judges discuss not only a large number of specific legal issues at these seminars, but are also informed of the procedural practice in operation in other countries. In recent years, the judges have worked out standard orders which apply in particular to temporary protection of the child after initiation of the return proceedings, as well as to orders for the return of the child, and are examined and refined at each seminar. Furthermore, representatives of other professions (youth welfare office staff, bailiffs), as well as foreign guests who have special experience with regard to the Hague Convention, are repeatedly invited to attend these seminars.

The judges themselves attend the seminars in large numbers; their assessment is highly positive and they themselves have said that the seminars have helped to further professionalise and improve cooperation.

Ensuring the safe return of children where issues such as domestic violence and abuse are raised

Re Qs 25 and 26:

The assertion of domestic violence or – less frequently – of abuse is frequently invoked by the abducting parent as an objection in accordance with Article 13 § 1 b) of the Hague Child Abduction Convention. If after taking account of the statement of the left-behind parent justified doubts remain as to the possibility of the safe return of the child, in suitable cases the court will call on the parties to make a statement on the possibility of accompanying and/or protective social educational measures in the country of origin. In application of the principle of ex officio judicial investigation applying to the proceedings, the court may in individual cases clarify the question of the child's safe return by consulting the social authorities or indeed by means of direct judicial communication with the court which has jurisdiction for the right of custody proceedings.

Insofar as the German courts have been seized of return requests, they have frequently availed themselves of “undertakings” in order to overcome the resistance and the reservations of the abducting parent as to the safe return of the child to the country of habitual residence. However, the experience in individual sets of proceedings, in particular with return to the United States, has been that the parent who had entered into an

undertaking with the abducting parent to safely return with the – frequently small – child no longer felt bound by this undertaking, and the parent was apprehended, detained or forced to leave the country after a short time after returning with the child. For this reason, the unilateral employment of undertakings is increasingly coming to be regarded as problematic unless it can be simultaneously coordinated with the court in the child's country of habitual residence which is seized with the decision on the right of custody. Cf. on this also Q 30.

Re Q 28:

There have been individual cases in which a court has assisted in the implementation of undertakings which were to secure the safe return of the child to Germany. One must expect undertakings entered into in response to an order or request of the foreign court to meet with greater acceptance.

Re Q 29:

In accordance with section 15 of the Act on International Family Law, which entered into force on 1 March 2005, in response to a request or ex officio the court may issue injunctions in order to avert dangers to the child, in particular in order to ensure the child's place of residence during the proceedings or to avert a situation preventing return or making it more difficult. Equally, in accordance with section 38 subsection 2 of the Act it may order the left-behind parent to have personal access to the child while the return proceedings are pending. The court with jurisdiction for the custody and/or right of access proceedings has jurisdiction for the issuance of "safe harbour orders" in Germany.

By contrast, when it comes to issuing "mirror orders" in Germany, the difficulty exists of ascertaining jurisdiction of a German family court at least in situations in which no custody and/or right of access proceedings are yet pending before the court. Whether such jurisdiction also applies if no main proceedings are pending is subject to contention in the case-law. A number of courts have issued mirror orders in such cases.

Re Q 30:

The possibilities to issue mirror orders and safe harbour orders are regularly discussed at the special seminars held by the Federal Ministry of Justice for family court judges, and orders which have been issued are exchanged. Because of the difficulties associated with the foreign recognition of undertakings, it suggests itself when employing undertakings to contact the judge in the other country who has jurisdiction for the actual right of custody proceedings in good time in advance and to discuss with the latter the possibility of employing mirror orders and safe harbour orders.

Re question 32:

Article 13 (1) *b*) of the Hague Convention is interpreted narrowly by German courts (see above answer to question 13k). Since the Hague Convention proceeds from the objective and rule that the return of the child best serves the child's interests, the matter addressed in this question must involve unusually grave risks that exceed the difficulties normally associated with a return and that cannot be averted by other means.

In general, German courts have ruled that the abducting parent's refusal to return, and the associated risk that the child will be separated from the abducting parent, is not a reason for refusing to order the return of the child within the meaning of Article 13 (1) *b*) of the Convention. In the case of smaller children, however, this is conditional upon whether the mother can reasonably be expected to return together with the child to the country where the abduction occurred. In this context, there is a decision in which a court of second instance determined that, in cases where a warrant for the arrest of the abducting parent has been issued in the country to which the child is to be returned, the abducting parent can be reasonably expected to return to that country only when such return serves the best interests of the child. In the court's view, this is not the case when the separation of the child from the abducting parent, which would result from the impending arrest, would seriously endanger the child's welfare within the meaning of Article 13 (1) *b*) of the Convention.

In addition, evidence of violence committed exclusively against the abducting parent is not significant grounds for refusal in Germany. Only when such violence threatens the child's best interests, or when violence is also or exclusively directed against the child, do courts issue decisions refusing to order the return of a child within the meaning of Article 13 (1) *b*) of the Convention.

When the submitted documents provide indications of such a situation, the German Central Authority conducts further inquiry in an attempt to clarify any problems prior to the initiation of court proceedings and, where appropriate, informs the applicant of the possible existence of grounds for refusal in this context.

The Guide to Good Practice

Re questions 36 and 37:

These documents form an integral part of the training of all Central Authority staff. The information contained therein is applied in the Central Authority's everyday work in accordance with German law. To the extent that we receive requests for support with regard

to academic research on the issues of child abduction and access rights in the broadest sense, we mention the Guide to Good Practice as an essential resource.

Re Q 40:

Section 44 of the Act on International Family Law, which entered into force in Germany as on 1 March 2005, provides for tightening up the available sanctions in case the parent who is under an obligation to return the child does not comply with the court's orders. Furthermore, there is provision when it comes to applying the Hague Child Abduction Convention and the Brussels II a Regulation that the court which most recently ruled on the merits of the return must implement the ruling *ex officio*, and can only refrain from doing so in response to a request from the entitled party. The two-instance system consisting of recognising and enforcing courts, which had given rise to considerable delays in individual cases, therefore no longer applies to such cases.

The Federal Ministry of Justice has so far co-organised two seminars for bailiffs at which the latter were familiarised with the particular difficulties involved in enforcing return rulings in accordance with the Hague Child Abduction Convention and with court-imposed access arrangements in cross-border cases. A checklist for professional conduct was developed at the seminars which will be further refined. Additionally, it was agreed that there would be closer cooperation between the judges with jurisdiction for the individual sets of proceedings and the bailiffs subsequently carrying out the enforcement.

Standardised consent form

No comments or suggestions.

Statistics and Case Management

Re question 46:

The German Central Authority maintains detailed case statistics. These statistics record the number of cases with respective Contracting States, the subject matter of the proceedings (return or access), the Central Authority's reasons for refusing the application (e.g., inability to locate the child in the requested state), the date on which the request was filed with a particular court, decisions of first and second instance, whether a request was refused by court decision and the reasons therefor, and other reasons for the closure of a case (e.g., voluntary return or out-of-court settlement).

The statistics for 2004 and 2005 are available on our website.

Re question 47:

The German Central Authority does not use specialised software. The database is run on Microsoft Access.

Publicity/ debate concerning the Convention

Re question 48:

1. Recently there has been a significant increase in the number of cases in which one of the parents – be it the abducting parent or the left-behind parent – engages the press. For the most part, the press gives the Central Authority the opportunity to state its view on that particular case. Cases in which media coverage is objective provide an opportunity to increase public understanding of the Hague Convention and its objectives and, above all, to strengthen public awareness of the Central Authority and its support mechanisms.

2. The German Bundestag adopted a new implementation act in connection with the entry into force of the Brussels IIa regulation. This new act broadly incorporates the expertise gained through the processing of Hague Convention cases.

Re question 49:

Negative effects can be seen when a parent attempts to misuse the Convention. For example, in a small number of cases, requests for return were filed after over two years had elapsed since the wrongful removal of the child. These requests were filed after the left-behind parent had become involved in custody proceedings in Germany and then later realised that he or she would not gain custody even in the second instance. Since only a court and not the Central Authority can reject a request due to the expiration of the one-year period, this caused the second-instance proceedings to be interrupted pursuant to Article 16 of the Convention. Ultimately only the custody proceedings were delayed, because the court rejected the request for return pursuant to Article 12 of the Convention.

Re question 50:

The following measures have been taken to disseminate information about the Convention:

- The German Central Authority maintains a website that is accessible to the public. The texts of the Hague Convention on Child Abduction, the Brussels IIa Regulation and the

German law on international family law procedure are available on this website. The above-mentioned brochure can also be accessed online.

- The brochure "International Proceedings in Parent and Child Matters" was sent to various authorities and persons who deal with such issues including all Land youth welfare offices, courts with jurisdiction to hear Hague Convention cases, the Federal Criminal Police Office and lawyers specializing in this field.

- The Federal Ministry of Justice and the German Judicial Academy organise specialised symposia on the Hague Convention on Child Abduction for judges, and the Federal Ministry of Justice also organises such seminars for court officers. Such seminars are also being planned for youth welfare office staff members.

- Central Authority staff are available to respond to enquiries regarding the Hague Convention from judges, applicants and their attorneys. Comprehensive answers to such enquiries are provided either verbally or in writing.

Interviews are occasionally given to the media, either to provide specific comment in connection with a concrete case or to disseminate general information on the work of the Central Authority.

- Central Authority staff publish articles in professional journals and forward important decisions to relevant publishers with the request that they be publicised.

- The Central Authority has provided support to other national and international projects (including a project by Cardiff University and a study by the International Social Service).

- To the extent their schedules allow, Central Authority staff accept invitations from various organisers to give lectures on the Hague Convention on Child Abduction and the work of the Central Authority.

Re question 51:

In Germany, no NGOs are involved in child abduction proceedings.

Services provided by the Permanent Bureau

Re Q 52a):

The extraordinarily worthwhile INCADAT collection of rulings unfortunately only contains a relatively small number of court rulings emanating from the civil law system.

Re question 52:

a. and b. INCADAT and the Judges' Newsletter on International Child Protection are used frequently by Central Authority staff and are therefore viewed as very useful. They serve as a very good source for gathering information on court decisions and experiences in other Contracting States.

c. The bibliography is very useful with regard to specific issues, particularly during the preparation of publications.

d. The Child Abduction Section on the Hague Conference website is very useful and important for the Central Authority's work due to the information it provides. Central Authority staff regularly access the website, for example to keep track of recent changes in information on individual Contracting States.

f. iChild is considered very useful. Unfortunately, due to a lack of capacity, Germany was unable to participate in the pilot stage.

g. We greatly appreciate the Permanent Bureau's support of national and international seminars and conferences. The response has always been positive when Permanent Bureau representatives participate in German judicial conferences.

Re question 53:

The information contained in the "standard questionnaire for newly acceding states" on the Conference website should be provided by all Contracting States and placed on the website. This online information should be updated regularly by all Contracting States.

Compliance with the Convention

Re question 54:

1. Regrettably, co-operation with the Serbian Central Authority has been problematic. As described below, certain proceedings have been subject to significant delays which are unacceptable in terms of the child's welfare.

In one particular case, the German Central Authority had to enquire a total of 31 times to find out the status of the proceedings; answers were received only sporadically. As a result, the mother who submitted the application does not know to this day whether appellate proceedings have even been initiated. Moreover, on 26 April 2006 the German Central Authority filed a request under the European Custody Convention with regard to this case. Despite several enquiries, to this day the Serbian Central Authority has not even confirmed receipt of the related documents.

In another case, the Serbian Central Authority informed the German Central Authority on 26 June 2004 that the proceedings had been brought before the competent Serbian local court. Seven enquiries regarding the status of the proceedings followed from our side. Not until 21 February 2005 did the Serbian Central Authority inform us that the proceedings had not yet been completed. Ensuing enquiries to the Serbian Central Authority remain unanswered to this day.

Finally, in a third case, there has been no reaction from the Serbian Central Authority for nearly two years. On 24 September 2004, the German Central Authority submitted a request for return to the Serbian Central Authority. Numerous requests for a status update have failed to receive a single response from the Serbian Central Authority.

The current state of affairs is exceedingly displeasing for the parties involved in these proceedings.

2. In addition, there are proceedings involving another state in which that particular state has so far failed to operate with the expedition envisaged by the Hague Convention. Scant information is provided on the current status of cases, and reminders must be sent repeatedly. In addition, this state transmits documents (e.g., court communications to the Central Authority, hearing transcripts) in the national language without describing the contents of these documents in the English-language cover letter.

Re question 55:

With respect to the aforementioned state, it is unknown whether that state has adopted appropriate provisions for implementing the Hague Convention.

Re question 56:

The German Foreign Ministry and the Federal Ministry of Justice also deal with child abduction cases involving states which are not parties to the Hague Convention. The return of a child from a non-Hague Convention state is often extremely difficult in practice or even turns out to be impossible. The Federal Ministry of Justice has, for example, been involved in cases of abduction of children to Lebanon, Egypt, Syria, Tunisia and Algeria. It is only in the rarest of cases that there has been a successful return of a child abducted to one of these countries to the parent living in Germany.

Non-Convention cases and non-Convention States

Re question 57:

It would be desirable if the discussions commenced at the Malta I and II Conferences could be continued and if it were possible to persuade countries shaped by Islam and other countries to accede to the Hague Convention.

Relationship with other instruments

Re question 60:

The following particularities should be pointed out regarding the Brussels IIa Regulation as it relates to the Hague Convention.

- Pursuant to Article 11 (2) of the Brussels IIa Regulation, a child must now be given the opportunity to be heard during a relevant proceeding unless this appears inappropriate due to the child's age or degree of maturity. However, it should be noted in this context that, pursuant to section 50b of the German Act on Non-Contentious Matters (*Gesetz über die freiwillige Gerichtsbarkeit*), children were already heard by judges in return proceedings in Germany before the Brussels IIa Regulation entered into force.

- The Brussels IIa Regulation modifies the Hague Convention to the extent that Article 11 (3), second sentence, of the Brussels IIa Regulation now stipulates that the court shall issue its judgment no later than six weeks after an application is lodged.

The exception set forth in Article 13 (1) *b*) of the Hague Convention is restricted by the Brussels IIa Regulation to the extent that, pursuant to Article 11 (4) of the Brussels IIa Regulation, a child is to be returned if it is established that adequate arrangements have been made to secure the protection of the child after his or her return to the Contracting

State from which he or she was taken. As such, it is to be expected that German judges will now increasingly seek so-called mirror orders or undertakings.

- The obligation to engage in cross-border cooperation is established in Article 11 (6) and (7) of the Brussels IIa Regulation.

Any other matters and recommendations

Re Qs 67 and 68:

The Swiss delegation proposed amongst other things to identify the proceedings and measures employed to secure the voluntary return of the child, and to suitably account for the possibility of mediation and to develop procedures to guarantee the safe return of the child and to guarantee the subsequent right of access for both parents. Furthermore, Switzerland proposes to create regulations enabling the authorities of the state to which the child has been abducted to receive information on the custody arrangement, on the relationship between the child and both parents and on the development of the child on return to the country of habitual residence.

The German delegation supports these proposals, although it should be examined whether the inclusion of such regulations in a Guide of Good Practice can be considered adequate.