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Processing incoming return cases by Central Authorities



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European Judicial Network
(in civil and commercial matters)

1 Receiving the request

1.1 Please provide information on foreign languages spoken by the Central Authority (contact details can be found in the European Judicial Atlas in civil matters), if any. In which language(s) does the Central Authority accept new incoming requests?

It is possible to communicate with the German Central Authority in German and English (see Article 91(3) of the Brussels IIb Regulation). Documents (e.g. reports, decisions) that are intended to be passed on to other German authorities or presented to a court must be submitted in German. In accordance with Article 91(1) and Article 80(3) of the Brussels IIb Regulation, such documents must be presented with a German translation.

1.2 What is the Central Authority's preferred method of communication - email, fax or postal service? Does the Central Authority accept requests received electronically? If so, is the original request on paper still needed (either to start the proceedings or at a specific stage of the process) or are electronically transmitted requests accepted at all stages of the proceedings?

At present, until the system of mandatory electronic transmission via e-CODEX has been introduced, transmission by email is preferred. It is also possible to communicate by fax or post. Original documents may have to be submitted later following a request to this effect from a court. These must then be sent to the Central Authority by post.

1.3 Would your Central Authority refuse an incoming application under Article 27 of the 1980 Hague Convention? If so, under what conditions?

Yes, if a return application is 'manifestly unfounded'. This condition is applied restrictively by the German Central Authority. It is not met if disputed facts are involved. Examples of cases in which the German Central Authority would refuse an application under Article 27 would be applications from third countries or applications relating to children over the age of 16. A refusal under Article 27 can be challenged before the courts.

2 Management of the case

2.1 Who can apply for the return of the child before your court (multiple answers possible)? Is it (i) the Central Authority, (ii) a Government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, or (iv) someone else (if so, please elaborate, e.g. the applicant him- or herself)?

The following actors can apply for the return of a child before the courts:

1. Central Authority, in accordance with Section 6(2), second sentence, of the Act to Implement Certain Legal Instruments in the Field of International Family Law (*Internationales Familienrechtsverfahrensgesetz* – IntFamRVG)
2. A private lawyer (this is referred to as a ‘direct mandate’)
3. The applicant him/herself

2.2 Is the applicant represented by the above-mentioned person or body at the court hearing? If the answer is negative, who is the legal representative of the applicant in the proceedings? Is it (i) the Central Authority, (ii) a Government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, or (iv) someone else (if so, please elaborate)?

If the application has been submitted by the Central Authority (1), the Central Authority grants sub-authorisation to a lawyer or applies to the court for a lawyer to be appointed in legal aid cases. The lawyer represents the applicant before the court.

A private lawyer (2) usually also represents the applicant during court hearings.

The applicant is also free to represent him/herself before the court (3).

2.3 How quickly will the case be referred to the legal representative of the applicant by the Central Authority?

If the application is submitted by the Central Authority (1), sub-authorisation is granted to the lawyer at the same time. In cases in which applicants are granted legal aid, the Central Authority applies to the competent court for the appointment of a lawyer.

2.4 If a private lawyer is used, does the Central Authority make the necessary arrangements on behalf of the applicant? If the case is not referred to a private lawyer by the Central Authority, does the Central Authority provide a list of possible lawyers for the applicant to choose from?

If the Central Authority submits the return application, it grants sub-authorisation to a lawyer or applies for a lawyer to be appointed (see 2.2). The applicant is free to engage a lawyer privately. In this case, however, the Central Authority no longer acts for the applicant in the court proceedings.

2.5 Is legal aid available to applicants? Who decides whether to grant the legal aid to the applicant? Is there a specific application form that the applicant has to complete? Are there preconditions to receive legal aid? Is there a means and/or merits test? What documentary evidence is the applicant required to provide? How long does it take to get the legal aid decision? What expenses does legal aid cover? (e.g., legal consultations, mediation, travel costs)

In principle, if the conditions of Section 114 of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) (in conjunction with Section 76 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit* – FamFG)) are met, in particular that of financial need, an entitlement to legal aid exists, which will be decided on by the same court that is competent to deal with the return application. The corresponding application form is made available on the website of the German Central Authority (https://www.bundesjustizamt.de/DE/Themen/Familieinternational/Sorgerecht/Formulare/Formulare_node.html). If the applicant states, and also proves, that he/she does not have sufficient financial means to conduct the legal proceedings, the Central Authority will generally also apply to the court for legal aid at the same time as filing the return application.

The applicant is subjected to a means test and the application must have sufficient prospects of success and may not appear frivolous. The applicant must demonstrate his/her financial need by submitting proof of income and assets. In principle, the decision on legal aid is made between submission of the application and the start of the court hearing.

The legal aid covers the court costs and the costs incurred by the applicant (including lawyer’s fees). If the court orders the applicant to appear in person, the legal aid also covers any necessary travel and accommodation

costs.

The legal aid does not cover the costs of the defendant, including the fees of the defendant's lawyer. Mediation is also not covered by the legal aid. The German Central Authority has a limited budget available for funding mediation and this can be applied for under the same conditions as legal aid (=financial need).

2.6 Does (i) the Central Authority, (ii) a government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, (iv) a court itself or (v) someone else (if so, please elaborate) provide assistance in locating the child's exact whereabouts? Does the absence of information regarding the child's exact whereabouts somehow preclude the possibility of applying to the court for the return of the child?

In accordance with Section 7 IntFamRVG, the Central Authority takes all necessary measures to locate the child's whereabouts, if these are unknown and there are indications that the child is in Germany. To this end, it will cooperate with various authorities. Knowledge of the child's whereabouts is essential to determine the competent court.

2.7 Will the Central Authority pursue a voluntary return? If so, will this happen before the case is referred to a lawyer and/or the court?

Yes, in principle the German Central Authority will pursue a voluntary return, in particular by sending a 'voluntary return letter' to the abducting parent. To avoid delays, this letter is generally sent at the same time as the return application is filed with the court, unless the applicant explicitly requests that action is taken before legal proceedings are commenced.

2.8 Does the Central Authority take any steps to prevent a further removal of the child while a voluntary return is explored? What preventative steps are available in your legal system?

If it is explicitly requested and sufficient grounds are put forward to support the request (such as a demonstrable concrete risk of further removal of the child), the Central Authority can take provisional measures in an individual case (e.g. ban on travel outside Germany, confiscation of identity card, regular police reports).

2.9 How quickly will the Central Authority give updates on an active case? How quickly will the Central Authority respond to requests for updates on an active case?

In principle, the Central Authority will give updates and respond to requests for updates immediately on receiving the information or question.

2.10 Does the Central Authority arrange for translations of any relevant forms (e.g., legal aid) or court documentation from the hearings? If yes, how long does it take?

Some information is available in foreign languages. For example, unofficial translations of the application for legal aid, together with guidance on completing the form, can be found in various languages at https://www.bundesjustizamt.de/DE/Themen/Familieinternational/Sorgerecht/Formulare/Formulare_node.html. Authorisations and forms for applications in accordance with the Hague Convention are available in various languages on the same page.

It should be borne in mind that applications to a court must be filed in German. However, the applicant can refer to the translations mentioned above for support when completing the German documents.

In principle, the Central Authority does not make any translations available.

2.11 Does the Central Authority arrange interpretation at any Court hearings that the applicant is required to attend?

Interpreters are appointed by the court.

3 Mediation or alternative dispute resolution

3.1 Is mediation available? Please provide details of mediation procedure including names of mediation organisations, cost of mediation and whether funding is available for mediation. Can the cost of mediation be covered by legal aid?

Mediation is available. The German Central Authority provides support with the organisation of mediation and the courts also draw attention to the mediation options available. If both parties agree to mediation, the German Central Authority supports the organisation of this process. The Central Authority and courts work closely together with the organisation MiKK e.V. in Berlin (<https://mikk-ev.org/>).

For information on the question about costs, see 2.5.

3.2 If and how is the Central Authority involved in arranging the mediation?

See 3.1.

3.3 Is another type of alternative dispute resolution available? If so, please elaborate on the procedure, organisations involved, including the Central Authority, and cost management

Mediation is available during the legal proceedings. The parties can also agree to a court-approved settlement within the framework of a conciliatory hearing. An agreement in the form of a settlement may be considered in particular as part of access proceedings.

4 Enforcement proceedings

4.1 If and how is the Central Authority involved in enforcement / implementation of return orders?

As the applicant's authorised representative, the Central Authority can request enforcement from the competent court, which is required to carry out enforcement of its own motion, and can represent the applicant in any written exchange of information with the court as part of the enforcement proceedings. Beyond its role as the applicant's authorised representative, the Central Authority as such is not involved in the enforcement process.

4.2 Does the Central Authority have specialists (e.g., social worker, psychologist, guardian ad litem) available to prepare the child and the abducting parent for the enforcement of the return decision?

No, enforcement is carried out by the competent court of its own motion. The court will often ask the local youth welfare office (*Jugendamt*) for support, which can also include advice.

4.3 Who applies for the enforcement of a return order? Is it (i) the Central Authority, (ii) a Government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, or (iv) someone else (if so, please elaborate)?

Enforcement is carried out by the court of its own motion, in accordance with Section 44(3), first sentence, IntFamRVG. An application for the enforcement of a return decision is therefore not required. . However, any person may request enforcement from the court.

4.4 In case of a court hearing during enforcement proceedings, is the applicant represented by the above-mentioned person or body?

In principle, there is no court hearing during enforcement proceedings. Return orders in accordance with the Hague Convention are enforced by the court of its own motion and the appointment of a lawyer is not mandatory, which means that there is no need for representation. However, it is recommended that applicants engage a local lawyer to support them with communication and organisational aspects.

5 Case closure

5.1 Who provides confirmation of the child's return?

To avert the enforcement order, which the court carries out of its own motion, it is up to the defendant to prove that he/she has complied with the obligation to return the child or hand over the child for return.

5.2 When does the Central Authority consider that the case is closed? Will the applicant receive written confirmation that the case has been closed?

If the applicant is legally represented by the Central Authority, the case is closed once the child has been returned to the country that was his/her country of habitual residence before he/she was removed to or retained in the country of abduction. In other situations the case is closed after the legal proceedings have concluded. In principle, the communication partners (in particular, the foreign Central Authority) are informed that the case has been closed.

6 Procedure under Article 29 of the Brussels IIb ((EU) 2019/1111) and Article 11(6)-(8) of the Brussels IIa ((EC) 2201/2003) Regulations (the so-called "overriding mechanism")

6.1 Does your Central Authority play any role in the overriding mechanism?

See 6.2

6.2 Please describe the procedure for the enforcement of a foreign return order mentioned in Article 11(8) of the Brussels IIa Regulation or foreign privileged decision pursuant to Article 29(6) of the Brussels IIb Regulation entailing the return of a child if the 1980 Hague return proceedings in your State led to a refusal under Articles 13(1)(b) or 13(2) of the 1980 Hague Convention earlier (see sub-questions of 2.2 for the information requested)

The applicant (through his/her authorised representative) can ask the court that refused his/her return application under the Hague Convention to issue the certificate in accordance with Annex I of the Brussels IIb Regulation and can submit this to the foreign court seised of the custody proceedings. Enforcement of a foreign privileged decision must be requested by the applicant before the German court with territorial jurisdiction. The Central Authority can provide information on the contact details of the competent court on request.

7 Training

7.1 Are specialised trainings regarding return cases organised for different professionals (such as lawyers, mediators, prosecutors, bailiffs etc)?

The German Central Authority organises seminars for judges at the specialist family courts twice a year, which are led by a German liaison judge and also involve other professional groups. The organisation MiKK e.V. offers regular training for mediators.

 Last update: 29/07/2026

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