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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?

Requests under the 1980 Hague Convention must be submitted to the Austrian Central Authority in German or translated into German. Central Authorities may also communicate with each other in English.

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?

Original copies of the request and the authorisation must be sent to the Central Authority by post. However, the documents may be transmitted to the Central Authority in advance by email or fax.

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

The Austrian Central Authority could refuse to process an application if the child has already turned 16 or there has manifestly not been any breach of custody rights, for example.

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 party concerned may apply for the return of a child him/herself or may be represented by a lawyer.

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)?

In accordance with Section 111c(4) of the Austrian Non-Contentious Proceedings Act (*Außerstreitgesetz – AußStrG*), the court must grant the applicant legal aid, including appointing a lawyer for unrepresented parties. This lawyer will represent the applicant during the proceedings and at hearings. The applicant may also be represented by a self-appointed lawyer.

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

The Central Authority will immediately forward the application documents to the competent District Court (*Bezirksgericht*), which will take further steps with the necessary urgency.

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?

The District Court makes the necessary arrangements for the representation of the applicant (see 2.2 above).

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 accordance with Section 111c(4) *AußStrG*, the competent judge must grant the applicant legal aid, including appointing a lawyer for unrepresented parties, regardless of whether the general conditions for granting legal aid have been met. The applicant is therefore entitled to legal aid (known in Austria as *Verfahrenshilfe*) without any test as to whether he/she satisfies the relevant conditions. Consequently, there is no application form to be completed to obtain legal aid. In the absence of any further application, an applicant who is already represented by a lawyer will only be granted an exemption from fees, in particular translation costs.

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?

If an application is received in which the whereabouts of the child are uncertain, but there are concrete indications that the child is in Austria, the Central Authority will make enquiries with the Central Register of Residents (*Zentrales Melderegister*) and possibly also with the Central Association of Austrian Social Insurance Authorities (*Dachverband der österreichischen Sozialversicherungsträger*). If necessary, it may also ask the police for support in locating the child (Section 111c(2) *AußStrG*).

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?

The District Court will pursue a voluntary return or an amicable settlement in the best interests of the child; if possible, both parents should appear at court hearings concerning an amicable settlement (Section 111c(5) *AußStrG*).

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?

In accordance with the general provisions on non-contentious proceedings, the District Court can order special measures (Section 107(3) *AußStrG*). Such special measures include, for example, a ban on leaving the country with the child or the confiscation of the child's travel documents (Section 107(3)(5) *AußStrG*).

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?

The Central Authority will give updates and respond to requests for updates immediately.

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?

As the applicant is represented by a lawyer, there is not usually any need to translate forms. Otherwise, the District Court is required to arrange for any translations.

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

The District Court arranges any necessary interpretation for court hearings.

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?

When pursuing an amicable settlement in the best interests of the child (Section 13 AußStrG), at which hearings both parents should appear before the court if possible, the court is required to take into account the particular urgency of the proceedings (Section 111c(5) AußStrG).

The District Court can also instruct the Family Court Assistance Service (*Familiengerichtshilfe*)

to perform an assessment, i.e. to explore possibilities and ways of achieving an amicable settlement and create a basis for a decision.

To safeguard the child's best interests, the District Court can also order participation in an initial discussion about mediation as a required measure (Section 107(3)(2)).

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

The Central Authority is not involved in arranging the mediation.

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

See 3.1 above for the possibilities in the area of alternative dispute resolution.

4 Enforcement proceedings

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

The Central Authority is not directly involved in enforcement proceedings. However, it can play a mediating and supporting role (in bringing together the individual actors, including the Austrian Foreign Ministry (*Außenministerium*) or other Central Authorities).

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?

The Central Authority does not have any such specialists. The enforcement bodies of the District Courts, the bailiffs, are responsible for enforcing the return decision. Bailiffs, whose remit may include enforcing the

handover of a child, must receive appropriate training.

When enforcing the return of a child or a decision regulating access rights, the court may ask the youth welfare authority (*Kinder- und Jugendhilfeträger*) to cooperate in the interests of the child (Section 111c(7) AußStrG). The agencies responsible for maintaining public security may also be engaged to provide support (Section 110(4) AußStrG).

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)?

The District Court must link the return order to an order for its compulsory enforcement, setting a deadline for compliance, unless missing evidence is required to demonstrate that certain conditions have been met before compulsory enforcement can take place. This decision is binding and enforceable, unless the court specifically excludes this, as otherwise the best interests of the child could be jeopardised under the specific circumstances of the individual case (Section 111c(5) AußStrG).

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

The applicant continues to be represented by a lawyer (Section 111c(4) AußStrG).

5 Case closure

5.1 Who provides confirmation of the child's return?

If the child is returned voluntarily, the District Court usually provides this information to the Central Authority, which immediately passes it on. If a return decision is enforced, the return is confirmed by the court.

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?

The Central Authority considers the case closed when the legal proceedings have ended, e.g. as a result of a final decision, a settlement, the withdrawal of the application or notification of enforcement. The case is also closed if there has been a further abduction of the child to a different country.

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")

There are no special arrangements for this.

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

The Central Authority does not play a particular role in this mechanism.

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)

There is no special enforcement procedure for these decisions. These decisions are enforced in the same way as decisions by the national courts ordering the return of a child.

7 Training

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

Special training is organised for judges, employees of the Family Court Assistance Service and bailiffs.

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