

[Home](#) > ... > [Family Matters & Inheritance](#) > [Parental Child Abduction](#) > [Processing Incoming Return Cases By Courts](#) > [Germany](#)

# Processing incoming return cases by courts



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European Judicial Network  
(in civil and commercial matters)

## 1 Concentration of jurisdiction

### 1.1 Which authority is competent to hear requests for return under the 1980 Hague Convention/Article 22 of the Brussels IIb Regulation ("requests for return")?

In the first instance, the local courts (family courts) and in the second instance the higher regional courts (family law panel) are competent to decide on requests for return under the Hague Convention.

### 1.2 Is the jurisdiction to hear requests for return confined to specialist courts? - If yes, to what courts is it restricted? How many judges within the specialist court exercise the jurisdiction? - If no, are the judges hearing return requests specialised?

Family courts have sole jurisdiction over requests for return under the Hague Convention (see above). According to Section 12 of Germany's International Family Law Procedure Act [*Internationales Familienrechtsverfahrensgesetz*, IntFamRVG], jurisdiction is vested only in the family courts located in a district in which a higher regional court has its seat. In the district of the *Kammergericht* (higher regional court) in Berlin, the Pankow Family Court has jurisdiction. In the Federal State of Lower Saxony, first instance jurisdiction for the entire state has been delegated to the Celle Local Court (Section 12(3) of the International Family Law Procedure Act).

Local jurisdiction is determined in accordance with Article 11 of the International Family Law Procedure Act and lies with the family court in whose district the child was residing at the time the request was received by the central authority or – if this cannot be determined – in whose district a need for care becomes known.

In the first instance, a single judge decides on requests for return under the Hague Convention. In the second instance, a panel composed of three professional judges decides. Transfer to a single judge is not possible in the second instance pursuant to Section 40(2) of the International Family Law Procedure Act, read in conjunction with Section 68(4) of the Family and Non-Contentious Proceedings Act [*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG].

### 1.3 By which method are the requests for return allocated to a judge?

Requests for return are allocated to judges according to the case assignment plan of the court in question. This is drawn up in advance by the presidium of the court (which consists of judges elected through a formal election process) and sets out general criteria for the assignment of requests. To further focus responsibility, most specialised courts have designated one or more judges to be responsible for Hague Convention proceedings. Therefore, under a court's internal case assignment plan, usually only a few of the family judges working at the court have responsibility for first instance cases, while at the courts of second instance specialised judicial panels handle Hague Convention proceedings.

1.4 What specialist training is provided for the specialist judges? In particular do they have the opportunity to attend multi-national conferences specialising on International Family Law? Is there a regular conference within your jurisdiction to which all judges dealing with requests for return are invited?

Judges hearing Hague Convention cases are regularly invited to participate in what is known as the Hague Convention Judges' Conference, which takes place twice a year and is organised by the liaison judge Martina Erb-Klünemann in collaboration with the Federal Office of Justice as the central authority under the Hague Convention. These conferences not only provide fundamental knowledge for newcomers, but also offer updates on all important national and international issues related to the Hague Convention. Experiences are shared. In addition, international guests from other Hague Convention signatory states are regularly invited as speakers.

Beyond that, there is also a general professional development programme, in particular offered by the German Judges Academy, the European Judicial Training Network (EJTN) and the European Academy of Law in Trier. In principle there is also the possibility of participating in international conferences in Germany or abroad.

## 2 Practice and procedure for requests for return in first instance court

2.1 Are there special rules of practice and procedure for requests for return? If yes, please provide a brief summary of the procedure and if relevant, provide a link

The International Family Law Procedure Act (I, IntFamRVG, <https://www.gesetze-im-internet.de/intfamrvg/> [in German]) regulates the initiation and conduct of return proceedings under the Hague Convention; see also responses to 2.2 and 2.3.

2.2 What steps are taken to meet the 6 weeks target described in Article 24(2) of the Brussels IIb Regulation?

1. Concentration of jurisdiction for Hague Convention proceedings (see 1.2);
2. Concentration of jurisdiction at the Hague Convention courts for other 'family matters' too (proceedings concerning the child), Section 13 of the International Family Law Procedure Act;
3. The case management conveyed to the Hague Convention judges in judicial seminars, although not binding, which includes, among other things, the immediate scheduling of a hearing date on the day a request is received;
4. Special procedural rules in the national implementing legislation: priority of court hearings in Hague Convention return proceedings over all other proceedings in the first and second instance. As a general rule, Hague Convention return proceedings cannot be suspended or deferred (Section 38(1) of the International Family Law Procedure Act).
5. The parties are obliged to cooperate in clarifying the facts (Section 38(3) of the International Family Law Procedure Act).
6. The court has extended powers to issue accompanying provisional orders (Section 15 of the International Family Law Procedure Act).
7. The deadline for lodging an appeal is only two weeks (Section 40(2) of the International Family Law Procedure Act).
8. The appellate court is obliged, upon receipt of the appeal, to promptly examine whether the immediate entry into effect of the contested decision on the return of the child should be ordered (Section 40(3) of the International Family Law Procedure Act).
9. Special provisions for the enforcement of Hague Convention return decisions.
  - a.) The court must carry out enforcement *ex officio*, unless the order relates to the surrender of the child for the purposes of contact (Section 44(3) sentence 1 of the International Family Law Procedure Act).

b.) Exceptionally, the appellate court (higher regional court) is responsible for enforcement if it has declared the order enforceable, issued or upheld it (Section 44(2) of the International Family Law Procedure Act).

2.3 If mediation is used, what steps are taken to ensure that the referral to mediation does not risk a breach of the 6 weeks target? How does the court examine whether contact should be ensured, in accordance with Article 27(2) of the Brussels IIb Regulation? Does the court examine whether contact should be ensured only on the basis of a request from one of the parties or can do so on its own motion?

Mediation is proposed by the courts before the oral hearing, which takes place within the six-week deadline. If the parties decide to attempt mediation, specialised mediators, such as those from the association MiKK e.V. (International Mediation Centre for Family Conflict and Child Abduction) in particular, are asked to conduct it. These mediators are able to conduct mediation at short notice. As part of the Mediator in Court (MiC) project in place at certain local courts (<https://mikk-ev.org/mediator-at-the-court/>), the Hague Convention court schedules two hearing dates on the day the request is received. At the first hearing, only the question of conducting mediation and contact arrangements during the ongoing Hague Convention proceedings are discussed; a mediator is also invited to this hearing. If the parties agree to mediation, it takes place immediately, usually on the following weekend. The date for the main hearing, which is scheduled in any event, is usually set for the penultimate week of the six-week period. This facilitates compliance with the six-week deadline for a decision.

Neither method results in procedural delays.

Section 38(2) of the International Family Law Procedure Act requires the court to examine, at every stage of the proceedings, whether the right to personal contact with the child can be ensured. In the initial order itself, which is served with the return request, the Hague Convention court inquires of all parties about their interest in and possibilities in respect of contact arrangements, and seeks to assess these with the assistance of the court-appointed guardian *ad litem* for the child.

2.4 How is the child given an opportunity to express his or her views in return proceedings? Please describe who hears the child's views and at which stage of the proceedings are their views heard

In principle, the child – regardless of age – is heard orally in the first instance by the court, personally by the judge in the presence of the guardian *ad litem* and in the absence of the other parties, at the latest during the main hearing. In addition, the court obtains a report on the child's current social situation from the German Youth Welfare Office and a report from a guardian *ad litem*.

2.5 Is the number of court hearings for requests for return subject to judicial discretion, or does your legal system establish a minimum/maximum number? If so, please indicate

The number of oral hearings that must be held before a decision can be made is at the discretion of the court. A personal interviewing of the parties, which usually takes place in a single session (oral hearing) in the first instance, is mandatory. A separate session may take place for the oral interviewing of the child, attended only by the court and the guardian *ad litem*.

In the case of mediation, routinely a maximum of two interviews take place within the six-week time frame (see point 2.3 above).

Generally, only one hearing is conducted in order to comply with the six-week target.

2.6 Is oral evidence admitted at the hearing? If it is, are oral submissions admitted to supplement written argument?

The court may request further investigations or information before the hearing, such as reports from the Youth Welfare Office on the child's social situation or a determination regarding wrongful removal under Article 15 of the Hague Convention. Due to the principle of expedited proceedings, only witnesses who are present are considered admissible. Supplemental oral submissions are permitted. In exceptional cases, an expedited expert report may be commissioned, with the expert being heard at the main hearing, to prevent any delay.

## 2.7 Is the applicant required to attend the hearing? Are there any procedural consequences if the applicant does not attend the hearing?

The court routinely orders the personal appearance of the applicant and the respondent, as the parents must be personally heard in proceedings concerning the person of the child (including Hague Convention proceedings) (Section 160 of the Family and Non-Contentious Proceedings Act).

If the court has ordered personal appearance and the applicant fails to appear without sufficient excuse, the court may impose a fine (coercive fine) to enforce personal appearance at the new hearing (Section 33 of the Family and Non-Contentious Proceedings Act). However, this does not apply if a party has their habitual residence abroad. This is frequently the case for the applicant.

## 2.8 Are the courts equipped with videoconferencing facilities to allow for remote participation through videoconferencing? What is the legal framework for using videoconferencing at the hearing? Is there a specific legal framework for hearings in return proceedings?

The availability of videoconferencing facilities varies from court to court but has expanded significantly in recent years. Legal framework: see Section 32(3) of the Family and Non-Contentious Proceedings Act and Section 128a of Germany's Code of Civil Procedure [*Zivilprozessordnung*, ZPO].

Under this framework the court must, in appropriate cases and provided sufficient capacity is available, permit participation by audio-visual transmission for one, several or all parties for the purposes of progressing the case, either upon request of a party or on its own motion. However, in view of the procedural law requirements of Section 160 of the Family and Non-Contentious Proceedings Act (see point 2.7 above), which mandate the personal hearing of both the parents and the child (cf. Section 159 of the same Act), the Hague Convention court will only permit a video hearing in exceptional cases. Court decisions to permit or refuse participation by audio-visual transmission are not subject to appeal.

There is a specific circumstance in return proceedings whereby the applicant is abroad. In such cases, the EU Taking of Evidence Regulation and the Hague Evidence Convention are to be taken into consideration.

## 2.9 What type of measures, including provisional or protective measures (safeguards), can be taken to ensure the safe return of the child?

Under Section 15 of the International Family Law Procedure Act, the court may, upon application or of its own motion, issue provisional orders to avert dangers to the child or to prevent impairment of the interests of the parties, in particular to secure the whereabouts of the child during the proceedings or to prevent the frustration or obstruction of the return.

Possible measures include:

- Ensuring that the child remains in a protected environment until the return (e.g., foster family, transitional care, supervised facility): rare;
- Ensuring the surrender of identity documents: confiscation or handing in of identity and travel documents to prevent a further abduction.

The Youth Welfare Office is also involved in enforcement.

# 3 Appeals

## 3.1 Is there an appeal from the first instance court?

An appeal is possible. It must be filed and the grounds stated within the abridged appeal period of two weeks (Section 40(2), second sentence of the International Family Law Procedure Act).

## 3.2 If there is a right of appeal, is it absolute or is permission to appeal required? Or is it on

points of law alone?

An appeal against first instance orders is possible without permission (this is an appeal on both points of law and fact).

**3.3 In the event of an appeal is the return order automatically suspended or may it nevertheless be enforced?**

A decision ordering the return of a child to another signatory state generally only becomes effective and enforceable upon becoming final (Section 40(1) of the International Family Law Procedure Act).

If an appeal has been filed, the appellate court must decide of its own motion whether to order the immediate entry into effect of the contested decision on the return of the child (Section 40(1) and (3) of the International Family Law Procedure Act).

**3.4 Is there a second appeal? If yes, is permission required?**

There is no further appeal (Section 40(2), fourth sentence of the International Family Law Procedure Act).

**3.5 What specialist experience and expertise is there in the appellate courts?**

Experienced family judges rule at the appellate court. For information on the concentration of jurisdiction, see point 1.2.

**3.6 What is the time scale for the determination of an appeal and, if applicable, a second appeal? If expedited, is priority given by statute, rules of court or practice?**

Article 24(3) of the Brussels IIb Regulation stipulates that a court of higher instance must give its decision no later than six weeks after all the required procedural steps have been taken and the court is in a position to examine the appeal, except where exceptional circumstances make this impossible. These judges are also specially trained to make expedited decisions.

**3.7 In accordance with Article 24(3) of the Brussels IIb Regulation, what are the procedural steps that need to have been taken for the 6-week target to start running for the higher instance court to be able to examine the appeal?**

The forwarding of the appeal document to the higher regional court by the local court, along with the relevant case file.

## **4 Enforcement of the return order delivered by the court**

**4.1 Which authority is competent for the enforcement of return orders?**

The competent authority for enforcement is the court that made the final decision: the higher regional court is responsible if it has declared the return order enforceable, issued or upheld it, cf. Section 44(2) of the International Family Law Procedure Act. In all other cases, the local court that issued the return order is responsible for enforcement.

**4.2 Are return orders provisionally enforceable? If so, is it decided automatically by the court or does the applicant have to request it? When a return order is challenged, how is the provisional enforceability affected?**

Return orders are only provisionally enforceable if the competent court expressly orders this (see also point 3.3 above).

If the return has been ordered, the court must carry out enforcement *ex officio* (no application by the applicant is required; it is possible for them to propose it), unless the order concerns the surrender of the child for the purposes of contact.

If the respondent files an appeal against a return order, this renders the decision non-final, meaning that enforcement is generally precluded. On receipt of the appeal, the appellate court must promptly examine whether the immediate entry into effect of the contested decision on the return of the child should be ordered (Section 40(3), first sentence, of the International Family Law Procedure Act).

#### 4.3 What is the procedure of the enforcement of return orders? Are there any legal measures (for example, some penalties) that may help to ensure the enforcement of the return order?

Enforcement is carried out by the court *ex officio* (see 4.1). Many courts initially give the parent who has been ordered to return the child the opportunity to comply with this obligation within a short deadline (usually two weeks), or to surrender the child to the other parent for purposes of return to their place of habitual residence prior to removal. If the respondent fails to comply with this obligation within the deadline set, the court will instruct a judicial enforcement officer to enforce the return order. Furthermore, the court may authorise the bailiff to enforce the surrender order, if necessary by applying direct coercion, including at night and on Sundays and public holidays, and to take the child away, search premises and call upon the police for assistance. The court may also order the Youth Welfare Office to assist the bailiff to de-escalate the situation.

The court may further order the use of direct coercion if the immediate enforcement of the decision is absolutely necessary (Section 90(1)(3) of the Family and Non-Contentious Proceedings Act). If the child is not surrendered voluntarily, the court may order appropriate measures. It should be noted that, in the event of non-compliance with the surrender order, a fine of up to €25 000 and coercive detention of up to six months may be imposed.

#### 4.4 Please describe the procedure for requesting suspension and refusal of enforcement of return orders?

In German law, it is disputed whether this constitutes a modification of the return decision or a suspension thereof. In the case of suspension of enforcement, the party requesting the suspension must clearly present the grounds for suspension with supporting evidence. The court responsible for enforcement examines the grounds for suspension and either orders the suspension, usually for a specified period, or proceeds with enforcement.

### 5 Enforcement of the privileged decision delivered by a foreign court

5.1 Which authority would be responsible for the enforcement of a foreign so-called overriding decision i.e. return order mentioned in Article 11(8) of the Brussels Ia Regulation or a foreign privileged decision pursuant to Article 29(6) of the Brussels IIb Regulation entailing the return of a child following a refusal in the requested state under Article 13(1)(b) or 13(2) of the 1980 Hague Convention

The specialised family court would be responsible for the privileged enforcement of a foreign decision pursuant to Article 29(6) of the Brussels IIb Regulation (Section 44 of the International Family Law Procedure Act).

### 6 Judicial Liaison

6.1 Has your jurisdiction officially/unofficially nominated a specialist judge to the European Judicial Network in civil and commercial matters (EJN-civil) / International Hague Network of Judges (IHNJ)?

Four family judges have been appointed to the EJN, who bring many years of experience in cross-border family law disputes and are responsible for various districts in Germany. Two of these judges also serve as family judges in the International Hague Network of Judges.

6.2 If yes, is the judge nominated a sitting judge? Was the nomination official or unofficial?

They are sitting judges at the local court or higher regional court who have been officially appointed.

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