

INFORMATION LEAFLET
from the Federal Office of Justice as Germany's Central Authority
under the terms of the Hague Child Abduction Convention
– Advice for applications made from abroad –

The aim of this information leaflet is to give you a brief overview of the procedures operated in Germany under the terms of the Hague Child Abduction Convention of 1980, especially as relates to what the Federal Office of Justice is authorised to do and what its requirements are in its role as Central Authority. In fulfilling this function, the Federal Office of Justice helps facilitate and accelerate the application process, so as to avoid unnecessary delays. Depending on the details of any one case, more individualised advice may be more appropriate.

You can find a comprehensive overview of information on international custody conflicts by going to the website of the Federal Office of Justice as shown below.

This information is available in German at:

www.bundesjustizamt.de/sorgerecht

and in English:

www.bundesjustizamt.de/custody-conflicts

1. What is the Federal Office of Justice authorised to do and what are its duties?

The Federal Office of Justice, as Central Authority under the terms of the Hague Child Abduction Convention, provides support in ensuring the return of children who have been wrongfully removed or retained, as well as support in asserting access rights, in a cross-border context. In fulfilling this function, it also supports parents entitled to custody who have been left behind in other States Parties to the Convention in exercising, in Germany, the rights which said Convention bestows upon them. In doing so, the Federal Office of Justice is authorised to initiate court proceedings in the name of the applicant party under the terms of the Hague Child Abduction Convention. This also includes the lodging of

a complaint appeal (which is subject to a deadline of two weeks), however this does not apply to extraordinary means of appeal. The Federal Office of Justice is not authorised to provide full legal advice such as would be provided by a lawyer, especially when the matter at hand is not related directly to the Convention, e.g. issues relating to custody rights.

2. Why is it so important to act as quickly as possible in cases of child abduction?

The aim of the Hague Child Abduction Convention is to ensure that children are returned as quickly as possible to the country in which they had their habitual residence before the removal or wrongful retention. The proceedings should therefore be conducted as speedily as possible in the States Parties. It is also of the utmost importance that the application be made in a timely manner. In the event that an application for the return of the child is only lodged with the competent court after a period of one year has already elapsed since the child was removed or wrongfully retained, it will likely prove very difficult to effect the return. The competent court under the Hague Child Abduction Convention may refuse the return in cases in which the person who removed or retained the child is able to prove that said child has now settled in to his or her new surroundings. To ensure that appropriate action is taken before the one-year period as defined by Article 12 of the Hague Child Abduction Convention elapses, German case-law states that the application must be made to the competent court (and not, therefore, to the Federal Office of Justice as Central Authority). Initiating and conducting the proceedings rapidly helps to avoid the risk of the child settling in to his/her surroundings.

3. What needs to be considered before making an application?

In the event that the requirements set out in this information leaflet are not conformed with, the Federal Office of Justice shall reserve the right not to make any application to the court, including lodging any appeals. Anyone wishing to make an application under the terms of the Hague Child Abduction Convention (Article 29) can do so in their own right at any time.

For further information, please see the website of the Federal Office of Justice as referred to above.

4. Which documents need to be submitted for the application?

Applications submitted under the terms of the Hague Child Abduction Convention to the Federal Office of Justice must include the documents listed below: All such documents submitted must be accompanied by a corresponding translation into German. Copies will usually be deemed sufficient, however, there may occasionally be a follow-up request for the originals. Applicants will not be required to fulfil legal formalities such as the submission of Apostilles.

Applications for return:

- Hague Child Abduction forms, filled in (translations available at www.bundesjustizamt.de)
- Proof of the child's identity (e.g. birth certificates or extracts from official registers, photographs)
- Proof that the applicant has parental custody (e.g. excerpts from local laws, marriage/divorce certificates, court orders, extracts from official registers)
- Proof of the child's habitual residence (e.g. certificate of residence, certificate of attendance or enrolment at educational establishments)
- Proof that the removal or retention was wrongful or unlawful (e.g. copies of an agreement or permission to leave the country and proof of revocation or time limit).

Applications for access:

- Hague Child Abduction forms, filled in (translations available at www.bundesjustizamt.de)

- Proof of the child's identity (e.g. birth certificates or extracts from official registers)
- Authorisation in line with Article 28 Hague Child Abduction Convention (available at www.bundesjustizamt.de)
- Specific suggestions as to how the contact will take place in practice (length of contact, suggested place of contact, who will bear the costs).

5. Do costs have to be paid for the proceedings?

The Federal Office of Justice's activities as Central Authority are carried out free of charge. Costs are incurred, however, for court proceedings carried out under the Hague Child Abduction Convention (see Article 26 in conjunction with Article 42 of the Convention). This applies to both court costs and the costs of legal representation.

6. How is it ensured that the parties have legal representation and how can the Federal Office of Justice offer support in relation to this?

There is no legal obligation to be represented by a lawyer in proceedings under the Hague Child Abduction Convention, but parties are strongly advised to have such representation. The Federal Office of Justice is able to initiate court proceedings, but is itself not able to participate in hearings. The Federal Office of Justice therefore supports the individual making the application in finding a lawyer if he or she does not have one. There are two ways of doing this: The allocation of a lawyer if the applicant is in receipt of legal aid or the appointing of a lawyer by the Federal Office of Justice on behalf of the applicant, who then bears the expense.

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7. What preconditions need to be met for legal aid to be granted?

The decision on whether or not to grant legal aid is made by the competent court, once an assessment of eligibility and the case's prospects of success has been carried out. Legal aid includes the reimbursement of costs incurred by the applicant on his or her own behalf and expenses; this especially relates to costs for an allocated lawyer and any travel costs, in particular for journeys to and from the hearing. It also includes other court costs incurred (fees and expenses, such as those for expert opinions or the translation of documents). However, costs incurred by the other side (the respondent party), in particular lawyer's fees, are not included. Although unlikely, there is always a possibility that despite having been granted legal aid, applicant parties who lose cases will have to reimburse the legal costs incurred by the respondent party.

The documents listed below should be submitted along with the application or otherwise as soon as asked for, in German, or alongside a translation into German. If the court asks for them, other evidence and position statements must be provided. The competent court may also require an affidavit.

- The signed original of the declaration on personal and financial circumstances (translations and notes on filling this out are available at www.bundesjustizamt.de).
- Proof of earnings and outgoings (such as income tax statements, tenancy agreements, bank statements, pay slips; notes on filling this out are available at www.bundesjustizamt.de).

Legal aid is only granted for the proceedings at one specific court instance. If an appeal is lodged, legal aid must therefore be applied for once again and, where these are required, up-to-date documents submitted. The granting of legal aid is also checked after approval and can be revoked in retrospect, especially if the financial circumstances of the parties change and they fail to cooperate.

8. Under what circumstances will the Federal Office of Justice authorise a lawyer to act on my behalf?

If the preconditions for the granting of legal aid are not met or legal aid is not wanted, the Federal Office of Justice will instruct a lawyer licensed to practise law in Germany to act on behalf of the person making the application in the proceedings under the terms of the Hague Child Abduction Convention. To this end, and before the application can be made to the court, an advance payment is required as soon as requested.

For a hearing at a court of first instance, an advance payment of EUR 1,500 is to be made by bank transfer, at a court of second instance the advance payment is EUR 520. As the deadline for any appeal in return proceedings is just two weeks, the advance payment for the court of second instance should be made as soon as a decision to lodge an appeal is made. Any amount which turns out to be surplus to requirements will be refunded immediately upon conclusion of the proceedings.

The bank details of the Federal Office of Justice, alongside a unique payment reference ("*Kassenzeichen*"), will be provided as soon as the application is received by the Federal Office of Justice in each individual case. It is very important to ensure that the file number and payment reference are stated correctly when making the payment. If either the file number or payment reference are missing, it may not be possible for payments to be allocated correctly, which can cause delays.

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