United States General Accounting Office

GAO

Report to the Chairman, Committee on Foreign Relations, U.S. Senate

April 2001

# FOREIGN AFFAIRS

# Changes to Germany's Implementation of the Hague Child Abduction Convention



GAO-01-423

# Contents

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**United States General Accounting Office**
**Washington, DC 20548**

April 10, 2001

The Honorable Jesse A. Helms
Chairman, Committee on Foreign Relations
United States Senate

Dear Mr. Chairman:

Over the past several years, the United States has been critical of Germany's handling of international parental child abduction cases that have been filed by U.S. parents.[1] Both the executive and legislative branches of the U.S. government have criticized Germany for not fully and consistently following the criteria and procedures established under the *1980 Hague Convention on the Civil Aspects of International Child Abduction*,[2] which governs such cases. The primary criticisms include the inappropriate use by German courts of certain provisions of the Hague Convention to justify retaining an abducted child in Germany, the length of time it has taken to adjudicate cases, and the failure to enforce left-behind parents' visitation rights. In September 2000, in response to your concerns about the rights of left-behind parents, we reported on the status and outcome of cases that U.S. parents have filed with Germany.[3] This second report identifies actions that Germany has taken or plans it has under way to reform its handling of international parental child abduction cases and how these actions may affect U.S. cases. We also obtained information about what State Department officers stationed in Germany are doing to assist left-behind parents. This information is contained in appendix I.

To identify German actions and plans and how they may affect U.S. cases, we met with German government officials, judges, and lawyers in seven cities in Germany during November 2000. We also interviewed Department of State officials in headquarters and in Germany. In addition, we reviewed the status and outcome of the 43 U.S. cases that had been opened after German authorities began changing their handling of Hague Convention

[1]International parental child abduction occurs when a parent removes a child from the United States or retains a child outside the United States, with the intent to obstruct the parental rights (including visitation rights) of the left-behind parent. 18 U.S.C. 1204.

[2]29 ILM 1501 (1980).

[3]*Foreign Affairs: Status of U.S. Parental Child Abductions to Germany, Sweden, and Austria* (GAO/NSIAD-00-226BR, Sept. 8, 2000).

cases in July 1999. More details about our scope and methodology can be found in appendix II.

## Results in Brief

In response to U.S. and other countries' concerns, German authorities have pledged their commitment to take steps to improve the handling of Hague Convention cases, and Germany has taken actions to address two of the three primary criticisms. Germany has established a task force to monitor German reforms and active cases, initiated efforts to build expertise among judges deciding Hague Convention cases, and changed its processes to accelerate case handling. Our analysis of information obtained in Germany and case data in Washington, D.C., indicates that changes are under way that may positively affect case handling. However, because many of these reforms are recent, we believe it will take time for case outcomes to fully reflect their effect. Despite these reforms, Germany has not acted to improve enforcement of visitation rights granted by German courts. The German courts' reluctance to enforce visitation orders is hampering Germany's efforts to improve its handling of Hague Convention cases.

## Background

The *1980 Hague Convention on the Civil Aspects of International Child Abduction* governs how international parental child abduction disputes are adjudicated. It requires that party states identify a lead government agency (called a "central authority") to serve as a central point of contact and to initiate or facilitate judicial or administrative proceedings. The State Department's Office of Children's Issues,[4] Bureau of Consular Affairs, is the central authority for the United States. Germany has identified the Federal Prosecutor General[5] as its central authority.

The United States and other countries, especially France and the United Kingdom, have expressed concerns about German authorities' handling of Hague Convention cases. In May 1999, State reported to Congress that the German administrative and judicial processing of abduction cases took 18 months or longer, a period State considered unacceptable.[6] In October

[4]State Department's Office of Children's Issues formulates, develops, and coordinates policies and programs on international parental child abductions.

[5]The German Federal Prosecutor General's office has no counterpart in the United States.

[6]*Report on Compliance With the Hague Convention on the Civil Aspects of International Child Abduction* (Washington, D.C.: Department of State, May 1999).

2000, State further reported that the systemic failure of German courts to enforce contempt[7] sanctions allowed abducting parents to resist enforcement of visitation orders indefinitely.[8] In addition, a May 2000 congressional resolution cited Germany, along with other countries, for not meeting their commitments under the Hague Convention.[9] Also, media in both the United States and Germany have actively reported on this issue, focusing on a number of high-profile, controversial cases. We reported that between January 1, 1995, and May 15, 2000, there were 257 cases where U.S. parents sought the return of, or visitation with, their children in Germany. According to the State Department, there were 17 cases pending German judicial action as of March 1, 2001.

In June 2000, for the first time since both countries signed (and became states party to) the Hague Convention, discussion of specific cases was elevated to the presidential level. At that time, President Clinton and Chancellor Schroeder, the German head of Government, met in Berlin and, according to the State Department, discussed a number of high-profile abduction cases among other bilateral issues. Their meeting resulted in the establishment of a U.S.-German working group on international parental child abductions. The working group met on June 27, July 24 and 25, September 25 and 26, 2000, and January 8 and 9, 2001, to discuss the concerns of each country and to seek solutions.

## German Initiatives to Improve Handling of Hague Convention Cases

Since July 1999, Germany has taken steps designed to improve its handling of parental child abduction cases under the 1980 Hague Convention. The most significant actions are summarized in table 1. Our analysis of information obtained in Germany and case data in Washington, D.C., indicates that these changes may have a positive effect on current and future cases. Because most German actions are very recent, however, it will take time for case outcomes to fully reflect their effect. These changes may not affect cases already decided by German courts. Although the task force is working to find acceptable solutions on some closed cases, German authorities said they will not revisit prior court rulings. State

[7]Contempt is the failure to obey a court order issued for another party's benefit.

[8]*Report on Compliance With the Hague Convention on the Civil Aspects of International Child Abduction* (Washington, D.C.: Department of State, Oct. 2000).

[9]H.Con.Res. 293. Sweden and Austria were also cited in this resolution.

Department officials accepted this position even though they disagreed with some past decisions.

**Table 1: German Initiatives to Improve Handling of Hague Convention Cases**

| Goal | Action | Status |
|---|---|---|
| Facilitate the resolution of difficult cases and monitor reforms. | Establish 5-member task force within the Ministry of Justice. | Created in October 2000 and funded through September 2003. |
| Enhance expertise among German judges on Hague Convention provisions and cases. | Reduce the number of courts and judges that hear Hague Convention cases. | Effective July 1999, the number of courts authorized to hear Hague Convention cases was reduced from 600 to 24.<br><br>Courts in Munich and Dusseldorf reduced to two the number of judges that adjudicate Hague Convention cases in November 2000. |
| | Implement judicial training programs sponsored by the Ministry of Justice nationwide. | Training seminars conducted in January and February 2001 for 48 family court judges representing 22 of the 24 German family courts. Additional training is scheduled for late 2001. |
| Accelerate case decisions. | Reengineer its system for processing cases and scheduling hearings. | Central Authority implemented reforms in October 2000. |

Source: GAO synthesis of information provided by German officials.

## Facilitating the Resolution of Difficult Cases and Monitoring Reforms

Germany established a special task force in October 2000 to lead German efforts to improve its handling of Hague Convention cases. The task force has five members, including a family court judge, a family law specialist, and two senior-level Ministry of Justice officials who joined the task force for bilateral discussions on parental child abduction cases with the United States. Based on our discussions with members of the task force, they appear to understand Germany's obligations under the Hague Convention and the areas in which German reforms may be needed. The task force has been funded for 3 years, until September 2003. The task force director explained that improvements in Germany's handling of these cases should increase over the life of the task force and that, as a result, there should be no need to extend the task force beyond that time. The task force has two primary responsibilities: assisting in the resolution of difficult cases and facilitating and monitoring reforms in German institutions.

The task force's influence over difficult cases is limited because German courts, which enjoy substantial independence under Germany's constitution, make the final decisions on abduction cases. Nevertheless, the director said that there were a number of actions that the task force planned to take to help facilitate consistent case outcomes. For example, the task force plans to provide information to the German youth authority

on Hague Convention provisions and to left-behind parents and their lawyers regarding German legal processes and institutions. The task force director indicated that it also plans to promote out-of-court, nonjudicial mediation, especially for long-standing, difficult cases, including cases in which a court has ruled against a left-behind parent. Because the German task force had been active for only a few months without having concluded any of its initiatives, we could not determine whether it could affect the outcome of U.S. cases. As of March 1, 2001, the task force told us that they were actively involved with six high-profile cases already decided by German courts.

Regarding the reform process, the task force is monitoring court proceedings and decisions and collecting data on observations by other governments and left-behind parents regarding how German authorities are handling these cases. Using this information, the task force will determine whether and to what extent it needs to get involved to facilitate the resolution of specific cases or encourage systemic change. The task force also serves as a facilitator for the German reforms discussed below.

## Enhancing Hague Convention Expertise Among German Judges

According to the Permanent Bureau of the Hague Secretariat, which monitors treaties on private international law, a well-trained and experienced judiciary is key to effectively implementing the Hague Convention. German government officials and judges told us that lack of judicial familiarity with the application of Hague Convention provisions has been a major problem affecting case decisions. German judges told us that a judge might not be familiar with the Hague Convention because he or she may not have previously presided over a Convention case.

The Hague Convention requires that, barring extreme circumstances, children be returned to their country of habitual residence. Once returned, a court in that country will decide custody. However, German officials and lawyers indicated that because of limited experience with Hague Convention requirements, some German judges may view their role differently. In these cases, German judges may believe that they are expected to decide the child's custody, applying German family law, rather than applying Hague Convention provisions. This could result in a judge ruling in favor of the abducting parent and denying return. To enhance Hague Convention expertise, German authorities have limited the number of courts and judges hearing such cases and have begun training them on the Hague Convention provisions.

## Limiting the Number of Courts and Judges That Adjudicate Hague Convention Cases

To promote judicial expertise in handling Hague Convention cases, the German parliament enacted legislation in July 1999, limiting the number of courts with jurisdiction to hear Hague Convention cases from 600 to 24. This resulted in a reduction in the number of judges with jurisdiction to hear such cases from approximately 2,000 to 200 judges. This legislative initiative, supported by the United States, was largely in response to criticism and pressure from France and the United Kingdom, two Hague Convention party states with long-standing concerns about German courts' decisions on Hague Convention cases.

In September 2000, in addition to the nationwide reductions, the German State Secretary encouraged further reductions in the number of judges hearing Hague Convention cases. According to a judge with the task force, the Ministry of Justice cannot order a reduction; it can only be reached and made effective by the judges themselves. Family courts in Munich and Dusseldorf have decided to reduce the number of judges hearing such cases to two—a primary and secondary judge. Other family courts in Germany have expressed interest in following the Munich and Dusseldorf courts but have not yet acted.

According to German lawyers handling Hague Convention cases, the concentration of Hague cases among fewer judges should improve case handling. For example, they said that the reduction in the number of judges hearing cases should result in fewer applications of the Article 13b exception to the Hague Convention. Under this exception, a party state can deny the return of a child if the return, in the court's opinion, would pose a grave risk to the child's mental or physical well-being. According to officials from the Hague Secretariat and the U.S. and German governments, this exception should be narrowly applied and not liberally used as a vehicle for denying a child's return. However, according to the State Department, some German judges have interpreted the exception too liberally and made "unconscionably broad" use of the Hague Convention exception in a number of cases. The German task force acknowledged that German judges used this exception too liberally in some past cases.

In our September 2000 report on the status of U.S. parental child abductions to Germany, we reported that, for the 172 closed cases where the child was not returned to the United States, German courts used the Article 13b exception 14 times (or 8 percent). Since September, German courts under the new 24-court system used the Article 13b exception once. That is, for cases handled under the new court structure, German courts used the Article 13b exception once in 30 (3 percent) cases, compared with 14 instances in 172 (8 percent) decided cases under the old structure.

## Implementing Judicial Training Programs Nationwide

To further familiarize judges with Hague Convention standards and procedures, the Ministry of Justice coordinated two 3-day training conferences in January and February 2001.[10] The training conferences were an effort to enhance common knowledge and expertise about the goals of the Hague Convention among German judges with jurisdiction over these cases. These conferences focused on the (1) creation and goals of the Hague Convention, (2) legal jurisdiction and provisions under the Convention, and (3) return and access rights and their enforcement under the Convention. Ministry of Justice officials told us that their role was limited to facilitating and coordinating the conferences while knowledgeable and experienced judges and lawyers conducted conference sessions for participating judges.[11]

In addition, Germany, the United States, and the Hague Secretariat have discussed plans to convene a conference among a number of Hague Convention party states in late 2001 to promote consistency in Convention interpretation and foster closer relationships. This conference would cover such topics as the intent of the Hague Convention, restricted use of Convention exception provisions, and enforcement of return and access decisions.

## Accelerating Case Decisions Through Reengineered Case Application Filing Procedures and Court Notification

According to the Permanent Bureau of the Hague Secretariat, prompt access to the courts is a key factor to the effective implementation of the Hague Convention. The longer a child remains in his environment, and bonds with the abducting parent, the less willing a court may be to order the child's return. In its May 1999 report, State cited Germany for lengthy case processing. We reported in September 2000 that German authorities took a median of 288 days to process Hague Convention abduction and access cases. Although Germany has not established a specific time limit for case adjudication, the German task force acknowledged that German courts have taken too long to adjudicate abduction cases in the past.

[10]The January training conference was conducted in Recklinghausen, Germany, for 25 family court judges, and the February conference was conducted in Bad Nauheim, Germany, for 23 family court judges.

[11]The U.S. embassy has proposed to support German judicial training by sponsoring child custody seminars for German family judges. These seminars would consist of three 1-day events throughout Germany and feature U.S. and German speakers on Hague Convention implementation issues. Through State's International Visitor Program, the U.S. embassy plans to sponsor visits in fiscal years 2001 and 2002 by German judges to the United States to meet with their U.S. counterparts.

Officials from the central authority in Bonn told us that they have changed their administrative procedures to expedite case application filing and court notification. In October 2000, the central authority established a policy to fully process and forward applications to the competent court within 7 days of receipt of a complete application. Before October 2000, the central authority took about 30 days. Only one of the cases we reviewed was opened after October 2000, when the new administrative procedures were put in place. This case was originally sent to the German central authority, which promptly transferred the case to French authorities upon learning from the U.S. left-behind parent that the abducting parent had fled to France.

In addition to lengthy administrative procedures, German Ministry of Justice officials conceded that German proceedings can be too lengthy, citing some judges' desire to hear the child's opinion and to request lengthy psychological reports from German youth authorities. Obtaining a child's testimony and youth reports are standard practices for deciding domestic custody cases. Collecting and analyzing all of this evidence before making a decision takes considerable time. According to one Ministry official, judges will depend less on psychological reports, which are geared more for domestic child custody cases, as they become more knowledgeable of Hague Convention procedures and requirements, which do not require such evidence. According to U.S. and German central authority officials, Hague Convention cases in Germany are being processed more expeditiously than before. Of the 43 U.S. cases opened since July 1999, when the number of courts and judges was reduced, 30 were closed by January 31, 2001. The median duration of cases was 147 days. For cases closed from January 1, 1995, through June 30, 1999, the median duration case was 304 days.

## German Courts Reluctant to Enforce Visitation Orders

Despite international criticism, some German courts are still reluctant to enforce court-ordered visitation rights of left-behind parents. German Ministry of Justice officials conceded that enforcement remains a problem and acknowledged that their ministry needs to work with the courts to change existing practices. The State Department indicated that it is seeking comprehensive information about German judicial enforcement practices and exploring options to encourage reforms. State officials told us that failure to enforce court-ordered visitation undermines the Hague Convention. We believe that, if this problem persists, the impact of the reforms being implemented could be undermined.

In its October 6, 2000, compliance report to Congress, the State Department reported that German courts systematically fail to enforce court-ordered visitation, thus allowing abducting parents to resist enforcement of orders indefinitely. We identified two cases where left-behind parents in the United States were seeking the enforcement of their German court-ordered visitation rights. In both cases, German judges failed to enforce the orders when the abducting parent refused to cooperate. According to German judges, domestic law does not permit the use of physical force[12] to enforce visitation orders. In addition, they told us that they are reluctant to employ existing sanctions because they fear that such actions would have a detrimental affect on the child. For example, incarcerating an abducting parent, which is one of the enforcement tools available to German judges, will separate the child from the parent. According to German judges, this could impact the child psychologically.

State officials are seeking detailed information about Germany's judicial enforcement mechanisms and exploring ways to encourage German courts to change existing practices. They indicated that they have raised this issue at each of the working group meetings since June 2000. Although enforcement of visitation orders was not on the agenda for Secretary of State Colin Powell's February 20, 2001, meeting in the United States with Germany's Foreign Minister Joschka Fischer, the topic was discussed during a U.S.-German bilateral meeting in the Netherlands on March 29, 2001. State indicated that it plans to continue raising the issue at all future meetings with German officials on the task force and at the central authority. State also plans to reserve positions in the International Visitor Program for German judges to discuss enforcement of visitation orders, among other issues. According to State, although the United States can attempt to influence German actions, only German authorities can make the decision to act.

## Conclusions

Germany's initiatives to enhance judicial expertise and accelerate case processing are steps that have potential to (1) positively affect German application of the provisions of the Hague Convention and (2) reduce the time taken to adjudicate cases. Because the reforms are recent, there are only a limited number of cases to demonstrate the actual effect of the initiatives. Germany has not acted, however, to improve its enforcement of visitation orders. This is a key concern of the State Department. Moreover,

[12]Such force would include physically separating a child from the abducting parent.

we believe that the failure to address the German courts' reluctance to enforce visitation orders could undermine Germany's efforts to improve its handling of Hague Convention cases.

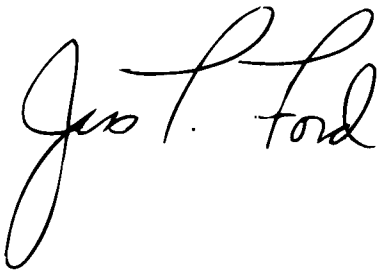
## Agency Comments and Our Response

We obtained oral comments on a draft of this report from the Department of State's Office of Children's Issues, Bureau of Consular Affairs, which agreed with the report's conclusion and provided us with technical comments that we incorporated as appropriate.

We are sending copies of this report to the Honorable Colin L. Powell, the Secretary of State, and interested congressional committees. We will make copies available to others upon request.

Please contact me on (202) 512-4128 if you or your staff have any questions about this report. Another GAO contact and staff acknowledgments are listed in appendix III.

Sincerely yours,



Jess T. Ford, Director
International Affairs and Trade

# Appendix I: Consular Assistance to Left-Behind Parents

The State Department's consulate offices can provide a variety of in-country assistance to left-behind parents involved in child custody conflicts. The State Department's Office of Children's Issues[1] in Washington, D.C., can request consular officers to locate and report on the child's welfare, conduct home visits, and assist in obtaining case status information. In addition, the U.S. embassy and consulate offices can provide left-behind parents with information on attorneys who handle Hague Convention cases and can contact or refer a left-behind parent to German agencies that can provide assistance.

According to U.S. consular officials in Germany, a common request from left-behind parents is to obtain the telephone number where the child can be reached. In more complicated cases where a left-behind parent has had no contact with the child, consular officials may be asked to write letters to various registration offices in Germany to locate the child's relatives. Consular officials can also perform home visits with the child when requested by a left-behind parent and consented to by the foreign parent. According to State, consular officers conduct most home visits unless (1) the foreign parent refuses a visit, (2) a child lives a great distance from the consular office, or (3) the workload of the consular official prohibits a personal visit. In addition, U.S. consular officials can obtain from German authorities information about the status of cases and report this information to both parents. They can also seek clarification as to how a particular aspect of a case is proceeding.

According to U.S. consular officials in Germany, 97 inquiries about child welfare and location and 23 home visits were conducted in fiscal years 1999 and 2000 (see table 2).

[1]State Department's Office of Children's Issues provides direction to foreign service posts on assistance to left-behind parents.

**Table 2: Consular Assistance to Left-Behind Parents (FY 1999-2000)**

| | Instances | |
|---|---|---|
| Assistance | FY 1999 | FY 2000 |
| Inquiries conducted about abducted child's welfare and location | 42 | 55 |
| Visits requested by Office of Children's Issues on behalf of left-behind parent | 18 | 28 |
| Residential welfare visits of abducted child conducted | 9 | 14 |
| Visits attempted but denied by abducting parent[a] | 3 | 7 |
| Visits not attempted[b] | 6 | 7 |
| Inquiries made into case status[c] | 13 | 17 |

[a]German Youth Authority officials may visit abducted U.S. children when the abducting parent does not permit visits by consular officials. Also, if an abducting parent denies a consular visit, then German courts can intervene. However, as explained earlier in this report, German courts may not intervene; they have been reluctant to enforce visitation orders for left-behind parents in U.S. cases.

[b]U.S. consular officers explained that they could not perform requested visits where the child lived a great distance from the consular office or when the workload of the consular official prohibited a personal visit.

[c]U.S. consular officers made specific inquiries for left-behind parents into the status of their cases.

Source: Information reported by the U.S. consulates in Berlin, Dusseldorf, Frankfurt, Hamburg, and Munich, Germany.

In addition to citing specific services they provide to left-behind parents, U.S. consular officials told us that they have been more closely involved in helping the Office of Children's Issues to monitor the resolution of U.S. Hague Convention cases since U.S. government attention on U.S. children abducted to Germany heightened in 2000. During our fieldwork in November 2000, we found that these officials were involved in organizing meetings and maintaining communication with the German central authority and Ministry of Justice on the status of U.S. cases. For example, consular officials in Berlin provided logistical support for U.S.-German working group meetings held in July and September 2000.

# Appendix II: Scope and Methodology

Our review focused on congressional concerns about Germany's handling of U.S. parental child abduction cases under the Hague Convention. To gather information for our analysis, we interviewed more than 40 key officials and representatives from the State Department, the German government, the Hague Secretariat in the Netherlands, and organizations dedicated to researching and understanding issues associated with international parental child abduction.

To identify what actions Germany has taken or plans it has under way to address U.S. concerns about Germany's handling of parental child abduction cases, we reviewed State Department reports from May 1999 to January 2001 that documented systemic problems with Germany's implementation of the Hague Convention and identified German actions taken or planned. These reports also identified State's goals and timetables for Germany to take remedial measures. To confirm and expand our understanding of information in these reports, we conducted fieldwork in Berlin, Bonn, Cologne, Dusseldorf, Frankfurt, Munich, and Potsdam, Germany. We interviewed senior German justice ministry officials, local family court judges, social workers, and private attorneys in those cities. We also interviewed officials from the German central authority, U.S. officials in Germany supporting State Department efforts to resolve abduction cases, and a French judge, seconded to the German Ministry of Justice to work on difficult German-French Hague Convention cases.

To determine how Germany's actions have affected the handling and outcome of U.S. cases, we reviewed the status, outcome, and other characteristics of cases adjudicated after German authorities began taking actions. We reviewed files that State's Office of Children's Issues maintains on cases initiated by left-behind parents from July 1999, when Germany began to concentrate the number of family courts hearing international abduction cases under the Hague Convention, through January 2001. These files included administrative, judicial, and communicative information related to each case.

We recorded the results of our analysis of State's files in a database and subsequently performed independent checks to ensure that data for each case were accurate. We compared the outcomes of cases opened and closed from July 1999 through January 2001 with those outcomes from cases opened and closed from January 1995 through June 1999.

We performed our work from October 2000 through March 2001 in accordance with generally accepted government auditing standards.

# Appendix III: GAO Contact and Staff Acknowledgments

## GAO Contact

John Brummet, (202) 512-5260

## Acknowledgments

In addition to the contact named above, Michael Zola, Janice Villar Morrison, and Mark Dowling made key contributions to this report.

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