



By Professor Nigel Lowe, Sarah Armstrong, Anest Mathias and Marie Navarro\*  
of the Centre for International Family Law Studies, Cardiff Law School, Wales, United Kingdom.

## 1. GENERAL BACKGROUND

The French Republic comprises the mainland (France *Métropolitaine*), the overseas Departments (*Départments d'Outre-Mer*), namely, Martinique, Guyane, Guadeloupe, Reunion, Saint-Pierre-et-Miquelon, and the overseas Territories (*Territoires d'Outre Mer*), namely, Nouvelle-Calédonie, Wallis et Futuna, Polynésie Française. France operates a civil law jurisdiction and its law is codified. Family law is governed by Articles 144 to 487 of the Civil Code and the relevant procedures are set out in the third book of the Code of Civil Procedure. Jurisdiction, recognition and enforcement issues in France, as in other EU States,<sup>1</sup> have been complicated by the Brussels II Regulation<sup>2</sup> which came into force on 1 March 2001 and has priority over French domestic law.

### 1.1 IMPLEMENTATION OF THE CONVENTION

France was one of the three original ratifying States<sup>3</sup> bringing the 1980 Hague Convention on the Civil Aspects of International Child Abduction into force in December 1983. Once ratified, international Conventions are directly applicable in France, which includes the mainland and the overseas Departments and Territories, upon the publication of a decree of ratification in the Official Journal (*Journal Officiel*). A decree of 29 November 1983 (*Décret 83-1021 du 29 Novembre 1983*),<sup>4</sup> published the Hague Convention and prescribed for its entry into force on 1 December 1983.

### 1.2 OTHER CONTRACTING STATES ACCEPTED BY FRANCE

France as a member State of the Hague Conference at the time of the Fourteenth Session when the Convention was drafted, ratified the Convention and as with all other Contracting States France must accept all ratifications. Nevertheless, under Article 38, non-Member States may accede to the Convention and Contracting States are not obliged to accept accessions. However, France has been reluctant to accept acceding States, and as at 1 January 2002, had accepted 12 of the then 38 acceding States. Indeed, the last accession accepted by France was that of Chile in February 1996.

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<sup>1</sup> With the exception of Denmark which is not a party to this Regulation.

<sup>2</sup> Council Regulation (EC) No. 1347/2000 of 28 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses OJ No. L160, 30.6.2000, p. 19.

<sup>3</sup> The other two States being Canada and Portugal.

<sup>4</sup> *Journal Officiel*, 1 December 1983, p. 3466.

It is the Central Authority in France which is responsible for reviewing applications for accession. The Ministry of Justice then validates the Central Authority's decision before transmitting this decision to the Ministry of Foreign Affairs, which formally accepts the accession. As at 1 January 2002, the Central Authority was reviewing the accessions of 15 Contracting States.

For a full list of all States for whom the Convention is in force with France, and the dates that the Convention entered into force for the relevant States, see the Appendix.

### **1.3 BILATERAL AGREEMENTS WITH NON-CONVENTION STATES**

France is a pioneer in the field of bilateral agreements and has negotiated several agreements with non-Convention and Convention States with regard to issues of international child abduction. The main bilateral agreements are with North African countries including Algeria since 1988, Egypt since 1982, Morocco since 1981 and Tunisia since 1982. Additionally, there is an agreement with Lebanon which entered into force in 1999. There are many problems concerning the operation of these agreements, in particular, relating to the differences in the legal cultures of France and the other States. For example, there are considerable differences between the laws of the States with regard to the rights of the mother. One stumbling block appears to be that some of the bilateral agreements do not apply unless one parent is a French national, regardless of whether they in fact live in France. In addition to bilateral agreements negotiated by France, all EU Member States are exploring the possibility of arrangements with non-Convention States chiefly in North Africa.

### **1.4 CONVENTION NOT APPLICABLE TO INTERNAL ABDUCTIONS**

The Convention does not apply to abductions within the French Republic. This therefore includes abductions between the mainland and any French overseas Department or Territory. Where such an abduction occurs the French civil or criminal law will apply and the local courts will be in charge of the case.

## **2. THE ADMINISTRATIVE AND JUDICIAL BODIES DESIGNATED UNDER THE CONVENTION**

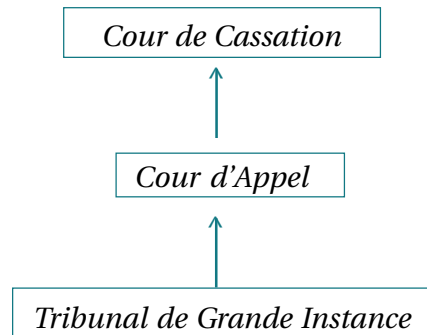
### **2.1 CENTRAL AUTHORITY**

The Central Authority for France is located in the *Bureau d'entraide judiciaire en matière civile et commerciale*, which is part of the Ministry of Justice located in Paris. This is the only Central Authority and therefore handles all cases involving France including cases with the overseas Departments and Territories. Altogether there are 11 members of staff in the Bureau, 8 of whom have some responsibility with regard to Hague Convention cases. The Head of the Bureau and three other members of staff are judges. Additionally, there is one lawyer and three secretaries, two of whom work full-time and one part-time. The staff involved in Convention cases also deal with other matters arising in the Bureau,

for example, the Head of the Bureau has responsibility for matters relating to international child support. However, about half of the Bureau's workload, is in relation to Hague Convention cases. Between them, the staff in the Central Authority have sufficient knowledge of the English, German, Italian and Spanish languages and staff, both legal and secretarial, undergo regular training. The Central Authority can be contacted at the following address:

*Ministère de la Justice*  
*Bureau d'Entraide Judiciaire Internationale (BEJI)*  
*Bureau D3*  
 13, *Place Vendôme*  
 75042 Paris Cedex 01  
 FRANCE  
 Tel: +33 (1) 4486 1466  
 Fax: +33 (1) 4486 1406

## 2.2 COURTS AND JUDGES EMPOWERED TO HEAR CONVENTION CASES



There are three tiers in the French court system. Courts of first instance include, *Tribunaux de Grande Instance*, (TGI), *Tribunaux d'Instance* and various specialised tribunals such as the *Tribunaux de Commerce* (for commercial cases) and the *Conseil des Prud'Hommes* (for employment cases). In Convention cases, jurisdiction at first instance is vested in the *Tribunaux de Grande Instance* as these courts generally deal with disputes between individuals. There are 181 *TGIs* in France and Convention cases are heard in the *TGI* in the region where the child is located. None of these *TGIs* are specialised in family law but have a generally broad remit. Usually three judges sit as a panel in these courts. However, specialist judges such as the *Juge aux affaires familiales* who is a specialist family judge can also sit alone. Convention hearings are either heard by a single *Juge aux affaires familiales* or by a panel of three judges.

Appeal is to the *Cour d'Appel* of that region.<sup>5</sup> There are 36 such appeal courts. The highest court in France is the *Cour de Cassation* which is situated in Paris. This court will only state the law where a point of law is in dispute.

<sup>5</sup> See French response to the questionnaire concerning the practical operation of the Convention and views on possible recommendations, sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission. (Hereafter 'French Response to the Hague Questionnaire').

By a law of 4 March 2002, France has confined jurisdiction to hear Convention cases to a small number of *TGIs*, one in each Appeal Court area. The number of judges able to hear cases has also been reduced.<sup>6</sup> This is a welcome adjustment and it is anticipated that this will speed up the procedure in Convention cases.

### 3. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR RETURN

#### 3.1 LOCATING THE CHILD

The Central Authority after receiving an application, will transmit it to a *Procureur* (Prosecutor), who will handle the case. The *Procureur* is responsible for locating the child in France. In civil cases, the *Procureur's* powers are limited and consequently, the French authorities may advise a left-behind parent to bring a criminal claim in order to increase the investigative powers available to the *Procureur* including the possibility of involving the police.

There is a circular which gives some civil law powers to the Central Authority to require local authorities to search their registries to see if a child has been registered in school. However, in general, the Central Authority is of the opinion that response is often too late and of little help. The Central Authority has no power to consult social security files in an attempt to locate a child, unless criminal proceedings have been brought.

#### 3.2 CENTRAL AUTHORITY PROCEDURE

Although English is spoken in the Central Authority, France made a reservation to Article 24 of the Convention stating that all applications must be in French or accompanied by a translation into French.<sup>7</sup> France does not offer funding to pay for these translations.

Upon receipt of an application, the Central Authority will check that the Convention criteria have been satisfied and that the appropriate documentation is attached. All applications to France must include an extract of the relevant law of the Contracting State from which the application has been made and an explanation of how that law may be applied. This extract must also be in French.

Once this checking procedure is complete, the application is sent to the *Procureur Général* based in the *Cour d'Appel* of the region where the child is located. The *Procureur Général* will then forward the application to the *Procureur de La République* who is based in the relevant *Tribunal de Grande Instance*. In practice, the Central Authority will often send a copy of the application directly to the *Procureur de La République* to save time. In an additional attempt to speed up the process, the Central Authority has recently begun to forward applications directly to the *Procureur* without waiting for all documentation, but merely informing the *Procureur* that necessary documentation will follow.

It is the responsibility of the *Procureur* to seek a voluntary return.<sup>8</sup> If the case is particularly sensitive, the *Procureur* will personally attempt to persuade the

<sup>6</sup> See Articles 20 and 21 of *la loi du 4 Mars 2002*.

<sup>7</sup> <http://www.hcch.net/e/status/stat28e.html#fr>

<sup>8</sup> French Response to the Hague Questionnaire, op. cit., n. 5.

parties to agree upon a voluntary return. In most cases, the police are asked to visit the abductor and discuss the application. Frequently, a police social worker is involved in negotiations and if necessary an experienced mediator will become involved. If the abductor does not agree to a voluntary return, the application will go to court.

### 3.3 LEGAL REPRESENTATION

On receipt of an application, the *Procureur de La République* will assign a representative of the prosecutor (a *Procureur Adjoint* or a *Substitut*), to represent the applicant and to bring the case to the court. Consequently, it is the State which brings the case. The advantage of this system is that representation is provided free of charge. However, applicants are often advised to appoint a separate lawyer as the *Procureurs* are not specialised in Convention cases. Particularly where Article 13 is raised, applicants are advised to have their own lawyer in addition to the *Procureur*.

### 3.4 COSTS AND LEGAL AID

France has made a reservation to Article 26 concerning costs in Convention proceedings and consequently is only bound to assume those costs covered by the French legal aid system.<sup>9</sup> However, the use of the *Procureur* is of benefit to the applicant as the service is free of charge, because the *Procureur* officially represents the State and not the applicant. Where the applicant wants their own lawyer, which is often recommended, they will have to pay themselves unless they are eligible for legal aid in France. If it is necessary for the *child* to have a separate lawyer a legally aided lawyer will be appointed.<sup>10</sup> Where legal aid is available, the President of the Tribunal can automatically grant such legal aid without waiting for a decision from the legal Aid Commission.<sup>11</sup>

### 3.5 LEGAL PROCEEDINGS

Where mediation fails, the petition for return is heard by a *Juge aux affaires familiales*, a specialised family judge. However, the judge may decide to remand the case to a panel of three judges. Remand is mandatory if either party requests it.<sup>12</sup> While, generally it is the Central Authority who passes the application to the *Procureur* who in turn brings the case, it is possible for the applicant to bypass the Central Authority and issue proceedings directly in the court. The ability to do this was confirmed by the *Cour de Cassation* in 1995.<sup>13</sup> Whether the case is brought directly by the applicant or through the Central Authority, the applicant's lawyer will use an emergency procedure known as a *référé*. The Central Authority advises the *Procureur* to use this procedure. A *référé* is made by an *assignation en référé* which is similar to an emergency writ of summons. Special sessions for

<sup>9</sup> <http://www.hcch.net/e/status/stat28e.html#fr>

<sup>10</sup> See Hutchinson, A; Roberts, R and Setright, H. *International Parental Child Abduction*, 1998.

<sup>11</sup> See French Response to the Hague Questionnaire, op. cit., n. 5.

<sup>12</sup> See Article 247 of the Civil Code & Article L.312-1 *Code de l'organisation judiciaire* cited at [http://frwebgate.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_co...:70663.wai](http://frwebgate.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_co...:70663.wai)

<sup>13</sup> Cass., 1ere, 7 June 1995, Bull. Civ. I, n deg. 234.

hearing *référé* applications are usually held once a week, more often in large cities. In cases of extreme urgency *référé* applications can be heard immediately by filing a *référé d'heure à heure*. A *Juge aux affaires familiales* hears a *référé* application.

The main advantage of using a *référé* is that it is faster than proceeding through the normal court system. Convention cases are not prioritised in France and therefore hearings may be delayed. In practice, while courts are willing to admit emergency procedures they have a backlog of such cases, leading to delays. Consequently, it is the responsibility of the *Procureur* or lawyer in the case to argue the need for such an emergency procedure given the international dimension to the case and the Central Authority will encourage them to insist that cases are dealt with under emergency procedures.

Where applicants opt to use the *référé* procedure without the aid of the *Procureur*, they will have to pay for proceedings unless they are eligible for legal aid. Even where legal aid is available, the court may not appoint a translator and the applicant may have to pay these costs.<sup>14</sup> Additionally, where the *Procureur* is not utilised, police assistance is not available to locate the child.<sup>15</sup>

The applicant does not need to attend the hearing and is not obliged to give evidence. However, it is often desirable for the applicant to be present as sometimes this may help the order to be executed more efficiently.

The burden of proof for finding exceptions to return lies on the defendant in the case. It has been noted that where Article 13 is raised, considerable delays may result. The procedures used to determine if a child objects to being returned are governed by Article 388-1 of the Civil Code. Where a child wishes to be heard, the judge may hear the child alone, or the child may be heard in the presence of a lawyer or another person of the child's choice. If the judge believes that the person nominated by the child for this purpose is not suitable, the judge may designate another person. In general, French judges are reluctant to hear a child's opinions believing that children are frequently influenced by one or both parents.

### 3.6 APPEALS

If either party wishes to appeal a decision of the *TGI* they must do so within 15 days of notification of the judgment. The *Cour d'Appel* in the region will then hear the appeal. The *Cour d'Appel* sits as a panel of at least three judges and appeals take the form of a rehearing of the case<sup>16</sup> and can be brought on an issue of fact or law.<sup>17</sup> The *Cour de Cassation* is the highest court in the land and will hear a case on a point of law only by way of a *Pourvoi en cassation* which must be filed within two months of the judgment of the *Cour d'Appel*. If the *Cour de Cassation* considers that the lower court did not apply the law correctly then it will quash the decision (this is known as *cassation*). The case will then be referred back to the *Cour d'Appel* which will often retry the case on both fact and law. If the *Cour de Cassation* is of the opinion that the *Cour d'Appel* had correctly applied the law, it will reject the appeal (*rejet du pourvoi*).

<sup>14</sup> Emergency Procedures in France – The Role of the Children's Lawyer; the Hague Convention; Into the Future (Conference Saturday 30 March 1996), Reunite: The National Council for Abducted Children, London 1996.

<sup>15</sup> <http://frwebgate.access.gpo.gov>

<sup>16</sup> West, A. *The French Legal System* 1998, p. 301.

<sup>17</sup> French Response to the Hague Questionnaire, op. cit., n. 5.



Globally in 1999 14% of cases going to court were appealed while in France the figure was higher at 31%, 4 out of 13 cases, which had been concluded.<sup>18</sup> This is the highest appeal rate of the Contracting States analysed in this report. It is also of some concern considering that appeal procedures, like procedures at trial court are not expedited. According to Beaumont and McEleavy, “the appeals process is fatally flawed, the delays being such that it must be questionable irrespective of the final decision, whether a return would ever be in the child’s interest”.<sup>19</sup> However, research from 1999 cases<sup>20</sup> shows that the concluded appeals actually took less time than the global averages. Nevertheless, it is clear that the lack of an expedited procedure is a matter for concern.

### 3.7 ENFORCEMENT OF ORDERS

The court can order temporary enforcement of decisions (*exécution provisoire ordonnée*) even where there is a claim pending before the *Cour de Cassation*. However, enforcement of orders which are pending appeal is often complicated. Judgments cannot be enforced until an authenticated copy of the judgment containing the enforcement procedure is delivered to the successful party. This will specifically require all *Huissiers de justice* (bailiffs), Public Prosecutors and police officers to lend their assistance when it is requested.<sup>21</sup> Most orders for return are complied with, there are no contempt procedures for the enforcement of civil judgments in French law but penal measures may be used to aid enforcement. In civil cases the judge may attach an *astreinte* to an order, which is a pecuniary penalty payable to the applicant on a daily basis until the order is complied with. It has been commented, however, that this order is rarely used as it amounts to taking money from the child.<sup>22</sup>

The French Central Authority helps to facilitate enforcement of orders but it is the *Procureur* who is responsible for overseeing the execution of orders made on French Territory. The local *Procureur’s* office may take the decision to invoke criminal proceedings to aid enforcement. The *Procureur* can organise meetings with a view to obtaining execution by force and to this end may use the intervention of a *Huissier*.

## 4. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR ACCESS

### 4.1 CENTRAL AUTHORITY PROCEDURE

The initial procedure for bringing an application for access is the same as an application for return. The Central Authority will receive and check the application and forward it to the relevant *Procureur*. However, unlike in return proceedings the *Procureur* will not bring the case before the court. In access cases, the Central

<sup>18</sup> See *A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* – drawn up by Professor Nigel Lowe, Sarah Armstrong and Anest Mathias – Preliminary Document No. 3 of March 2001 for the attention of the Special Commission of March 2001. (Hereafter ‘Preliminary Document No. 3’).

<sup>19</sup> Beaumont, P and McEleavy, P. *The Hague Convention on International Child Abduction*, Oxford University Press, 1999, p. 256.

<sup>20</sup> See Preliminary Document No. 3, op. cit., n. 18.

<sup>21</sup> See [http://frwebgate.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_co...:70663.wai](http://frwebgate.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_co...:70663.wai)

<sup>22</sup> Meeting with M Mancini, General Secretary of the French Mediation Commission and Magistrate in charge of the *Mission d’Aide à la Mediation pour les Familles*, November 2001. (Hereafter ‘Mancini Meeting’).

Authority may provide information both to parents and to the *Procureur* regarding services or facilities available to assist the applicant. The Central Authority may also provide information about emergency procedures.

By virtue of Articles 372 and 324 of the Civil Code, parental authority is exercised jointly. Consequently, mediation is often offered to parents in cases of persistent family conflicts. Even where a parent has sole parental authority mediation can be offered. The Central Authority is also available to offer advice and assistance.

## 4.2 Legal Proceedings

As with return applications, all applicants must be represented in access cases. Except where the *Procureur* brings the case applicants must appoint a lawyer to represent them. The *Procureur* will assess if the applicant is eligible for legal aid and if they are a lawyer will be assigned to them. Where the applicant is not eligible for legal aid, the *Procureur* will provide them with the names of three or four lawyers, or alternatively, the applicant may ask the Consulate for a list of lawyers.

Applicants are entitled to bring criminal proceedings if they have had an access right denied or violated. Where family mediation fails, the *Procureur* can require judicial mediation.<sup>23</sup>

## 5. OPERATING THE CONVENTION – OUTGOING APPLICATIONS FOR RETURN

### 5.1 PREVENTING THE REMOVAL OF THE CHILD FROM THE JURISDICTION

#### 5.1.1 CIVIL LAW

During marriage or after divorce, where custody is jointly exercised, either parent is deemed to act with the agreement of the other and can therefore remove the child from France.<sup>24</sup> However a parent who fears that their child may be taken from France may apply for an order prohibiting the removal of the child.

Parents can also restrict the issue of a passport for their child. Normally, an application for a passport for a child or an application to include a child on an adult's passport can only be processed with the authorisation of those exercising custody of the child. Where it is feared that a child may be abducted, the authorities responsible for issuing passports can include on page five of the passport the following conditions:

- For an individual passport for a child – notice that the passport can only be used upon presentation at each border control of the authorisation of both parents.
- For an inscription to include a child on an adult's passport – notice that the express agreement of the other parent authorising the child to leave the country for a stated period is required.
- For an inscription to include a child on the passport of a third party – notice that the express agreement of both parents authorising the child to leave the country for a stated period is required.<sup>25</sup>

<sup>23</sup> See French Response to the Hague Questionnaire, op. cit., n. 5.

<sup>24</sup> Article 372-2 of the Civil Code.

<sup>25</sup> See Circular No. INTD9000124 of May 1990.



Border guards should check passports to ensure that where such notices are given, they are complied with. Parents can also request that their opposition to their child leaving the country is registered on a police computer system (*fichier automatisé des personnes recherchées [F.P.R.]*). Such opposition can be made in respect of any French child or any child whose parents legally reside in France. Any person wishing to register their opposition must go to their local *Préfecture* who will contact the police. When any application for a passport, or an application for authorisation for a child to leave the country, is being made, the computer files must be searched.<sup>26</sup>

There are three main types of opposition that can be registered: *Long Duration Opposition Measures* which last for a year and are renewable on an annual basis, provided there is a judicial decision requiring it. At each application to renew the measures, the administrative services should ensure that no new judicial decisions have been made which may be prejudiced by renewing the measures; *Conservatory Opposition Measures* which are valid for 15 days and cannot be renewed or extended. These are of particular use while a person is waiting to obtain a judicial decision regarding custody of a child; and, *Emergency Opposition* which can be registered at the nearest police station or gendarmerie brigade and will last seven days. An applicant can also directly inform border guards and the police if they know from where the child is likely to leave the country.

Where a child is travelling to a country which only requires an identity card and he is travelling alone or with a third party, he may be required to obtain authorisation to leave the country, (*autorisation de sortie du territoire français*).

The *Collectif de Solidarité aux Mères des Enfants Enlevés*, is a non-Governmental organisation which specialises in international child abduction. It is involved in providing information to parents regarding how to prevent an abduction from France. They estimate that 30% of the phone calls they receive relate to issues of preventing abduction.

### 5.1.2 CRIMINAL LAW

The criminal law relating to child abduction and the withholding of access rights is set out in the Criminal Code and the relevant procedures are found in the *Code de Procédure Pénale* at Articles 227-5 to 227-10.

Parental child abduction is punishable by one years imprisonment and a fine of €5.000 (formerly 100.000 FF).<sup>27</sup> These penalties are doubled when the child is retained for more than five days and information with regard to the child's whereabouts is withheld, and, when the child is taken outside the French Republic.<sup>28</sup> Where this is the case an international arrest warrant (*mandat international d'arrêt*), may be issued. The penalties will be tripled when the guilty party has lost parental authority.<sup>29</sup>

Failure by the person with whom the child habitually resides to give notice within one month of any change of address to a person who has access rights to the child is punishable by a six month prison term and a fine of €7. 500 (formerly 50.000 FF).<sup>30</sup>

<sup>26</sup> Ibid.

<sup>27</sup> Article 227- 7 of the Criminal Code.

<sup>28</sup> Article 227- 9 of the Criminal Code.

<sup>29</sup> Article 227- 10 of the Criminal Code.

<sup>30</sup> Article 227- 6 of the Criminal Code.

## 5.2 CENTRAL AUTHORITY PROCEDURE

If a child has been abducted from France to another Convention State, applications should be made to the French Central Authority. The applicant must complete the standard application form in the language of the country to which the application is being made. Applicants must meet their own translation costs but there are some organisations which may help the applicant with this. Once the application form has been completed, and the application is thought to be well founded it will be forwarded to the relevant Central Authority. The French Central Authority will then take all relevant measures to ensure that the case is followed-up.<sup>31</sup>

The French Central Authority has no powers to help to locate a child in a foreign jurisdiction. If the Central Authority considers that the child has been taken to a country which does not have good location facilities, they may advise the applicant to locate the child before making the application.

## 6. AWARENESS OF THE CONVENTION

### 6.1 EDUCATION OF CENTRAL AUTHORITIES, THE JUDICIARY AND PRACTITIONERS

Until the recent legislative amendments,<sup>32</sup> there were a considerable number of *Procureurs* and judges involved in Convention cases which meant that generally they were not specialised in Convention proceedings. The Central Authority does offer some training on an annual basis but, as this is run as voluntary seminars, many *Procureurs* do not attend as they deal with so few Convention cases. As a result the Central Authority had said that they would like to see a specialisation of judges so that training could be targeted in all appeal courts and then cases could be referred to those who have received training, limiting the number of judges able to hear Convention cases. Due to legislative amendments there are now a limited number of *Tribunaux* and therefore judges able to hear Convention cases. Inevitably, this reduction of personnel able to plead and hear cases, will lead to greater specialisation both amongst *Procureurs* and judges. When an application is forwarded to the *Procureur* in the case, the Central Authority provides papers which explain the workings of the Convention.

France has been a key participating country in all three De Ruwenberg conferences on child abduction. Representatives of the Central Authority and judiciary also attended a Francophone-Anglophone Family Law Colloquium held in England in 2001 which inter alia discussed child abduction. A French delegation also took part in the Second International Forum on Child Abduction organised by the International Centre for Missing & Exploited Children held in the USA.

In France, lawyers belong to a professional organisation in their locality known as a Bar, and the Bar in Paris has committed itself to undertaking agreements with equivalent organisations in other States with a view to promoting and facilitating the Convention. On 8 December 1983, the Paris Bar signed an agreement with the equivalent body in Barcelona, Spain. On 10 April 1992, they signed another agreement with the equivalent organisation in Dallas,

<sup>31</sup> See French Response to the Hague Questionnaire, op. cit., n. 5.

<sup>32</sup> See *la loi du 4 Mars 2002*. (Hereafter '*la loi du*').

USA. These agreements commit the organisations to exchanging appropriate information on laws and doctrines in their respective States and to assist the applicant in procedures by providing them with a lawyer in the foreign State. The existence of these agreements allows for expertise to develop.

## 6.2 INFORMATION AND SUPPORT PROVIDED TO THE GENERAL PUBLIC

The existence of the Central Authority is not well publicised in France. There is no web site and currently no booklet explaining the Convention or the services offered by the Central Authority. This is unusual for such a key Convention jurisdiction which has been operating the Convention for almost 20 years. Nevertheless, the Central Authority is considering publishing a web site. There is a Franco-German Mediation Commission<sup>33</sup> which deals with Convention cases between the two States and they may also create a web site which would be linked to the Central Authority site. The Central Authority is also in the process of producing an information booklet entitled, *What to do if Your Child is Abducted*. At present, because information about the Central Authority is not widely published, most applicants are referred to the Central Authority by associations which provide support for parents.

There are several such associations in France. The *Collectif de Solidarité aux Mères des Enfants Enlevés* (CSMEE), was set up initially with the aim of ensuring that France signed a bilateral agreement with Algeria in relation to international child abduction. CSMEE deals particularly with abductions involving North African States. Every year, CSMEE receives about 500 telephone calls and their work involves interviewing parents, lawyers, other organisations and ministers with a view to resolving cases. They can be contacted at the following address:

*Collectif de Solidarité aux Mères des Enfants Enlevés*  
9 rue des Chaillots  
92190 Meudon  
FRANCE  
Tel: +33 (01) 45 34 49 10 (from 9 am to 1 pm)  
Fax: + 33 (01) 46 23 11 64

Another organisation called *S.O.S. Enlevements Internationaux d'Enfants* is particularly involved in Franco-German cases. They provide practical advice and operate a web site containing useful information.<sup>34</sup> They can be contacted at the following address:

*S.O.S. Enlevements Internationaux d'Enfants*  
Pascale Limarola  
1 Les Maradas Burns  
95000 Cergy-Pontoise  
FRANCE  
Tel: +33 (01) 34 24 90 24

<sup>33</sup> See post at 6.3.

<sup>34</sup> <http://www.soschildabduction.com>

Additionally, the French Central Authority is aware of other organisations working in the field including:

*Fondation pour l'Enfance*  
 17 rue Castagnary  
 75017 Paris  
 Tel: +33 (01) 53 68 16 50  
 Fax: +33 (01) 53 68 16 59

*Collectif pour le Retour des Enfants Enlevés au Liban*  
 Violaine Delahais  
 Tel: +33 (01) 49 12 91 56

*SOS Enlèvements d'Enfants*  
 4 rue du Donjon  
 60600 CLERMONT  
 France  
 Tel and Fax: +33 (03) 44 50 67 40

### 6.3 THE FRANCO-GERMAN PARLIAMENTARY MEDIATION COMMISSION

The Franco-German Parliamentary Mediation Commission is a temporary structure created to intervene in cases between the two States. There have, for a number of years, been some tension between France and Germany in relation to child abduction and the Mediation Commission was set up in 1998 in response to these tensions. The Commission comprises six members, three from each State. On the French side there is a Minister representing the majority, a Minister representing the opposition and a Member of the European Parliament. Additionally, a Magistrate has been appointed to act as a general secretary to the French Parliamentarians. In Germany, the three Ministers are all representatives of the majority ruling party, one of whom is a Member of the European Parliament.

The Mediation Commission has convened several ad hoc meetings, the first of which took place in Luxembourg in October 1999. Between October 1999 and November 2000, six meetings were held and a decision was made that the Commission should meet on a regular basis.<sup>35</sup> The French Parliamentarians see their role as twofold, firstly, the solving of pending cases through attempts at mediation, and secondly, drawing conclusions from the individual cases studied, with a view to preventing further abductions and mitigating the increasing phenomenon of abducting children between the two States.<sup>36</sup> The German side of the Commission currently only deals with mediation.<sup>37</sup>

<sup>35</sup> Intermediate Report from the German Parliamentary Members of the Mediation Commission, Mme Gebrardt, Mme Schwall-Duren and M. Stockel, 8 March 2001. (Hereafter 'German Intermediate Report').

<sup>36</sup> Intermediate Report from the French Parliamentary Members of the Mediation Commission, Mme Beres, Mme Dinah Dericke and M. Cardo, 22 November 2000.

<sup>37</sup> German Intermediate Report, op. cit., n. 35.

Both countries have produced detailed reports on the work of the Commission available in French and German.<sup>38</sup> A common report is also being drafted.<sup>39</sup> The French and German reports make a number of proposals and recommendations. In particular, the French report makes 22 proposals for reform, with a view to preventing abduction. As a result of some of these recommendations, a permanent structure within the French Ministry of Justice has been established. This is known as *la Mission d'aide à la Médiation pour les Familles* (The Family Mediation Mission), and comprises seven staff including two Magistrates, a psychologist / social worker and secretarial staff. The Mission has three main roles, providing mediation in individual cases, participating in international negotiations relating to mediation and providing training to professionals in the field of international mediation.<sup>40</sup>

To date, the Commission has handled 39 cases, 24% of which have resulted in a positive outcome. Two of the 39 cases were brought by Germany and the remaining 37 by France. In 32 cases the left-behind parent was the father and in 3 cases the left-behind parent was the mother. In the remaining two cases children were abducted from grandparents.<sup>41</sup>

## 7. THE CONVENTION IN PRACTICE – A STATISTICAL ANALYSIS OF APPLICATIONS IN 1999<sup>42</sup>

The Central Authority in France handled a total of 107 new applications in 1999, making France the fifth busiest Convention jurisdiction in that year.<sup>43</sup>

Incoming return applications	42
Outgoing return applications	43
Incoming access applications	15
Outgoing access applications	7
<b>Total number of applications</b>	<b>107</b>

<sup>38</sup> *La loi du*, op. cit., n. 32. See ante at 6.3.

<sup>39</sup> Mancini Meeting, op. cit., n. 22.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> The following analysis is based on Preliminary Document No. 3, op. cit., n. 18.

<sup>43</sup> The USA, England and Wales, Germany and Australia all handled more new applications in that year.

## 7.1 INCOMING APPLICATIONS FOR RETURN

### 7.1.1 THE CONTRACTING STATE WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
Germany	6	14
UK-England and Wales	6	14
USA	5	12
Canada	4	10
Italy	4	10
Spain	3	7
Switzerland	3	7
Australia	2	5
Netherlands	2	5
Finland	1	2
Israel	1	2
Norway	1	2
Sweden	1	2
UK-Scotland	1	2
Mexico	1	2
Mauritius	1	2
<b>Total</b>	<b>42</b>	<b>~100</b>

As may have been expected, France received the most applications for return from two of its neighbours, Germany and England and Wales. Perhaps less obviously, North American States also made a significant proportion of applications to France.

### 7.1.2 THE OUTCOMES OF THE APPLICATIONS

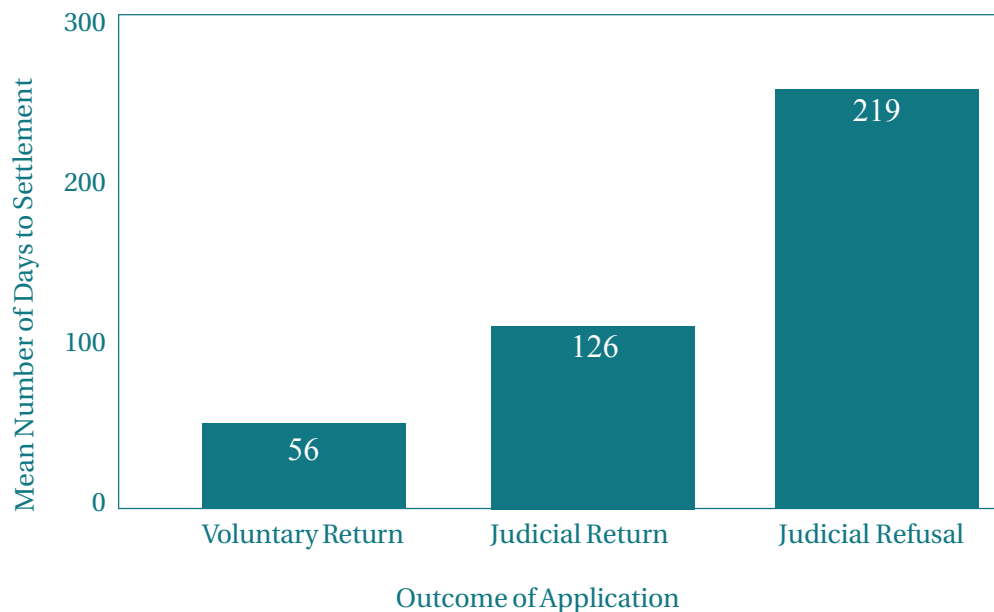
Outcome of Application		
	Number	Percent
Rejection	6	14
Voluntary Return	11	26
Judicial Return	10	24
Judicial Refusal	3	7
Withdrawn	3	7
Pending	4	10
Other	5	12
<b>Total</b>	<b>42</b>	<b>100</b>

Compared with the global average fewer children were judicially returned, 24% of applications as opposed to 32%. However, a higher percentage of applications resulted in a voluntary return, 26% compared with 18% globally. Overall, therefore, 50% of applications resulted in the child being returned which is identical to the global average. On the other hand, few applications, 7%, were judicially refused compared with the global average of 11%. Of the 13 cases which went to court, 77% ended in return being ordered which compares with the global average of 74% of court orders resulting in the return of the child. The proportion of rejected cases at 14% is higher than the global average of 11% while the proportion of withdrawn applications at 7%, is below the global average of 14%. It is to be noted that four applications were still pending at 30 June 2001 which may give pause for thought.



Three of the 'other' outcomes resulted in the child being returned and including these cases 57%, of applications resulted in the return of the child.

### 7.1.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION



There were 10 voluntary returns for which timing was stated and these were concluded faster than the global mean average, 56 days compared with 84 days. Conversely, judicial decisions took considerably longer than the global averages. Globally, the mean period of time for a judicial decision to return was 107 days, but for France this was 126 days. However, 3 out of these 10 orders were made at the appellate level. Data was only available for two of the three judicial refusals, (one of which was an appellate decision). One case took 285 days and the other, the appellate decision, took 152 days.

Number of Days Taken to Reach Final Outcome			
	Outcome of Application		
	Voluntary Return	Judicial Return	Judicial Refusal
Mean	56	126	219
Median	22	120	219
Minimum	0	14	152
Maximum	183	307	285
<b>Number of Cases</b>	<b>10</b>	<b>10</b>	<b>2</b>

The chart above shows the minimum and the maximum number of days to reach each conclusion. It is to be noted that although one judicial return decision was made within 14 days of the application, France appears to operate relatively slowly at least with regard to court decisions. As stated in the section on legal proceedings, Convention cases are not prioritised or expedited in the French system. It is also to be noted that four applications were still pending resolution.

## 7.2 INCOMING APPLICATIONS FOR ACCESS

### 7.2.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
Germany	3	20
Italy	3	20
Denmark	2	13
Australia	1	7
Canada	1	7
Israel	1	7
Netherlands	1	7
Spain	1	7
USA	1	7
Poland	1	7
<b>Total</b>	<b>15</b>	<b>~100</b>

The highest number of access applications were received from two countries which border France, Germany and Italy, surprisingly no access applications were received from England and Wales which made the second highest number of return applications to France.

### 7.2.2 THE OUTCOMES OF THE APPLICATIONS

Outcome of Application		
	Number	Percent
Rejection by the Central Authority	0	0
Access Voluntarily Agreed	3	20
Access Judicially Granted	1	7
Access Judicially Refused	0	0
Other	3	20
Pending	3	20
Withdrawn	5	33
<b>Total</b>	<b>15</b>	<b>100</b>

Unlike the global average of 34% of access applications being concluded by judicial order (either granting or refusing access), there was only one judicial determination of an access application in France. Four applications resulted in access being granted or agreed and at 27% this is below the global average of 43%. A large proportion of applications, 33%, were withdrawn which is above the global average of 26%. There was also a large proportion of applications which were still pending, 20% as opposed to a global average of 13%. All these cases were still pending at 30 June 2001 which may give pause for thought.

The 'other' outcomes were: the applicant decided to change her application to an application for return; in another case the court granted access with respect to one child and the parents reached a voluntary agreement regarding the other child; and in the third case the child had not been located but the application had not been formally rejected.

## 7.2.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION

Timing to Voluntary Settlement		
	Number	Percent
0-6 weeks	0	0
6-12 weeks	1	33
3-6 months	0	0
Over 6 months	2	67
<b>Total</b>	<b>3</b>	<b>100</b>

As with the global picture, a high proportion, two out of the three voluntary settlements, took over six months to resolve. The judicial decision also took over six months to reach a conclusion. As with return applications this highlights that France handles applications relatively slowly.

## 8. CONCLUSIONS

Being one of the original three ratifying States, France has a long and honourable record of operating the Convention. It is also a pioneer of concluding bilateral agreements with non-Convention countries particularly those of North Africa and the Near East, though these do not appear to work well.

In terms of overall outcome France appears to be operating the Convention satisfactorily with 50% of return applications made in 1999 resulting in the children's return, which exactly mirrors the global average. Unlike the global average, the majority of returned children, in 11 out of 21 cases, were returned voluntarily. On the other hand, there were relatively few judicial refusals (3 out of the 13 cases, 23%, that were judicially concluded). Like most Contracting States, Convention applications for access were less successful for although none of the 1999 applications were judicially refused, indeed there was one judicial adjudication, in only 4 of the 15 applications, 27%, was access either granted or agreed which is well below the global average of 43%.

The foregoing statistics bear testimony to the fact that the French system seems well geared and most successful in facilitating voluntary agreements both for returns and for access. In this respect the *Procureur's* role in mediating resolutions needs to be acknowledged.

As against this, it has to be said that the system works less well when matters have to be resolved judicially. In particular, the system operates slowly with judicial returns taking an average 126 days and refusals to return 219 days, both considerably slower than the global averages.

A number of factors seem to contribute to this delay. For example, so far as the 1999 applications were concerned, the Central Authority operated a policy of waiting for all the documentation before forwarding the applications to the *Procureur*. This practice has now been abandoned which should help to speed up the initial process (a similar development has taken place in Germany). It cannot help speedy disposals that these may be handled by *Procureurs* with no previous experience of Convention cases. However, the recent legislative amendments<sup>44</sup> restricting jurisdiction to a limited number of *Tribunaux* can only help with speedy disposition and are therefore to be welcomed. Currently, the

<sup>44</sup> See *la loi du*, op. cit., n. 32.

overwhelming cause of the delay is the fact that generally Convention applications are not prioritised nor is there a generally available expedited procedure under French law. It is true that there exists an emergency procedure known as a *référé*, but this is frequently not available due to a backlog in the court system. There is an urgent need to devise an expedited judicial procedure geared to Convention applications.

Another contributing cause of overall slowness in disposing Convention applications is the frequency of appeals (31% as against a global average of 14% of 1999 applications).

As against these criticisms there are a number of positive aspects to French practice. In particular, both the legal and secretarial staff of the Central Authority undergo regular training. Although, understandably France has made a reservation to Article 24 (2), Central Authority personnel understand English, German, Italian and Spanish. In order to expedite the initial proceedings the Central Authority have recently altered their practice and forward applications to the *Procureur* without waiting for the full documentation. The *Procureur* will present the case to court at no cost to the applicant (however, in general an applicant is advised to also retain a private lawyer at his own expense, unless he qualifies for legal aid in France).

The Franco-German Committee has proved a successful stratagem for not only handling difficulties between the two countries but also acting as a catalyst for improving the system. In this respect, it is to be noted that the French Mediation Mission is setting up a web site. Additionally, the Central Authority itself is in the process of publishing a booklet and considering creating a web site.

## 9. SUMMARY OF CONCERNS

- *Procureurs* are not specialised in Convention cases.
- There is no generally available expedited court procedure for handling Convention cases.
- Appeals are frequent.

## 10. SUMMARY OF GOOD PRACTICES

- France has recently limited the number of *Tribunaux* able to hear Convention cases.<sup>45</sup>
- English, German, Italian and Spanish are all spoken in the Central Authority.
- Central Authority staff, both legal and secretarial, undergo regular training.
- To help expedite proceedings, the French Central Authority now send applications to the *Procureur* without waiting for full documentation.
- France has a good track record of facilitating voluntary agreements, and in this respect the *Procureurs'* role works well.
- The *Procureur* will present the case to court at no cost to the applicant (however, in general an applicant is advised to also retain a private lawyer at his own expense, unless he qualifies for legal aid in France).

<sup>45</sup> Ibid.

- France is a pioneer of making bilateral agreements with non-Convention countries (though they have met with limited success in part because some of them can only be used if one of the parties is a French national).
- There is a Franco-German Commission set up to consider difficult cases between the two States.
- The Central Authority is in the process of publishing a booklet concerning applications under the Convention.
- The Central Authority and the French Mediation Mission are both considering publishing a web site.

## APPENDIX

As at 1 January 2002, the Convention is in force between the following 42 Contracting States and France.

<b>Contracting State</b>	<b>Entry Into Force</b>
ARGENTINA	1 JUNE 1991
AUSTRALIA	1 JANUARY 1987
AUSTRIA	1 OCTOBER 1988
BAHAMAS	1 SEPTEMBER 1997
BELGIUM	1 MAY 1999
BELIZE	1 JANUARY 1992
BOSNIA AND HERZEGOVINA	1 DECEMBER 1991
BURKINA FASO	1 JANUARY 1993
CANADA	1 DECEMBER 1983
CHILE	1 FEBRUARY 1996
CHINA-HONG KONG SPECIAL ADMINISTRATIVE REGION	1 SEPTEMBER 1997
CHINA-MACAU SPECIAL ADMINISTRATIVE REGION	1 MARCH 1999
CROATIA	1 DECEMBER 1991
CYPRUS	1 OCTOBER 1995
CZECH REPUBLIC	1 MARCH 1998
DENMARK	1 JULY 1991
FINLAND	1 AUGUST 1994
FORMER YUGOSLAV REPUBLIC OF MACEDONIA	1 DECEMBER 1991
GERMANY	1 DECEMBER 1990
GREECE	1 JUNE 1993
HUNGARY	1 FEBRUARY 1987
IRELAND	1 OCTOBER 1991
ISRAEL	1 DECEMBER 1991
ITALY	1 MAY 1995
LUXEMBOURG	1 JANUARY 1987
MAURITIUS	1 JULY 1995
MEXICO	1 JANUARY 1992
MONACO	1 MARCH 1993
NETHERLANDS	1 SEPTEMBER 1990
NEW ZEALAND	1 JANUARY 1992
NORWAY	1 APRIL 1989
POLAND	1 FEBRUARY 1993
PORTUGAL	1 DECEMBER 1983
ROMANIA	1 MARCH 1993
SLOVAKIA	1 FEBRUARY 2001

SPAIN	1 SEPTEMBER 1987
SWEDEN	1 JUNE 1989
SWITZERLAND	1 JANUARY 1984
TURKEY	1 AUGUST 2000
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	1 AUGUST 1986
UNITED KINGDOM-BERMUDA	1 MARCH 1999
UNITED KINGDOM-CAYMAN ISLANDS	1 AUGUST 1998
UNITED KINGDOM-FALKLAND ISLANDS	1 JUNE 1998
UNITED KINGDOM-ISLE OF MAN	1 SEPTEMBER 1991
UNITED KINGDOM-MONTSERRAT	1 MARCH 1999
UNITED STATES OF AMERICA	1 JULY 1988
VENEZUELA	1 JANUARY 1997
YUGOSLAVIA	1 DECEMBER 1991



Charles B. Wang International Children's Building  
699 Prince Street  
Alexandria, Virginia 22314-3175  
U.S.A.

Tel: +1 (703) 274 3900  
Fax: +1 (703) 274 2222

