



## **The Role of the authorities under the Hague Child Protection Convention (HC 96)**

### **1. Introduction**

The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (HC 96; SR 0.211.231.011) came into force in Switzerland on 1 July 2009.

The following guide is primarily intended to explain the role of the competent (administrative or judicial) authorities and their responsibilities under the HC 96 as well as how the HC 96 operates and is applied in specific cases. Based on a brief illustration of the three main cases of application, the most important procedures under the Convention are explained.

The cantonal authorities referred to in this document are the administrative authorities and courts competent to take measures to protect children, recognise and enforce foreign judgments or measures and issue certificates under Article 40 paragraph 1 HC 96.

If you require any additional information, do not hesitate to contact the Central Authority in your Canton or the Federal Central Authority.

### **2. The Convention in brief**

#### **a. Applicability**

Under Article 85 paragraph 1 of the Federal Act on Private International Law (IPLA; SR 291), the HC 96 applies to the protection of minors regarding the jurisdiction of Swiss courts or authorities, the applicable law and the recognition and enforcement of foreign judgments or measures. Before the HC 96 came into force, the Swiss legislation on private international law in this field was based on the Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants (HC 61; SR 0.211.231.01). The latter continues to apply to Switzerland's relationship with States that have not ratified the HC 96, but only if they are Contracting Parties to or have ratified the HC 61. In relation with States that have ratified neither the HC 96 nor the HC 61, the HC 96 applies based on the general reference in Article 85 paragraph 1 IPLA (see decision of the Swiss Federal Tribunal 5A\_809/2012 of 8 January 2013).

The list of Contracting States to the HC 96 is available on the website of the Hague Conference.<sup>1</sup>

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<sup>1</sup> <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>



## b. Scope of application

The HC 96 regulates jurisdiction, applicable law, recognition, enforcement and cooperation in the area of parental responsibility and measures of child protection at an international level. In terms of the Convention, it is primarily the authorities in the State where the child is habitually resident that have jurisdiction to take protection measures. These authorities apply their own domestic law and, in principle, the measures under the HC 96 are recognised in other Contracting States by law.

The material scope of the HC 96 is defined in Articles 2–4. Article 3 lists the main cases of application. Article 4 provides a conclusive list of cases where the Convention does not apply: these include questions about the parent-child relationship, adoption and maintenance obligations.

The child protection measures that are not expressly mentioned in Article 4 fall within the scope of the HC 96.

In order to encourage cooperation and achieve the Convention's goals, the HC 96 offers various procedures based on an international network of Central Authorities.

## 3. Summary of the tasks of the Central Authorities

The Federal Act on International Child Abduction and the Hague Convention on the Protection of Children and Adults (FA-ACA; SR 211.222.32) regulates the division of tasks between the Federal Central Authority (Federal Office of Justice, Private International Law Unit) and the Cantonal Central Authorities at national level. Each Canton has designated a Central Authority to be responsible for the application of the HC 96. A list of Cantonal Central Authorities is available on the website of the Federal Office of Justice.<sup>2</sup>

The tasks of the **Federal Central Authority** are as follows:

- transmitting communications from abroad to the Cantonal Central Authority;
- providing information on Swiss law and child protection services in Switzerland to foreign authorities;
- representing Switzerland before Central Authorities in other countries;
- advising the Cantonal Central Authorities on the Convention and ensuring their application in the Cantons;
- promoting cooperation between Cantonal Central Authorities, cooperation with experts and institutions under Art. 3 FA-ACA and with the Central Authorities of Contracting States.

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<sup>2</sup> <https://www.bj.admin.ch/bj/en/home/gesellschaft/kinderschutz.html>



The tasks of the **Cantonal Central Authorities** are as follows:

- transmitting communications and documents to the authorities and courts in Switzerland and abroad that are directly involved in cases;
- encouraging a mutual exchange of views between authorities;
- coordinating the action taken by cantonal and communal authorities responsible for protection of children and adults;
- in general, dealing with any other tasks in terms of the HC 96 that are not the responsibility of the Federal Central Authority, in particular those under Article 31 ff.

#### **4. Direct cooperation between authorities**

In general, authorities in two Contracting States to the HC 96 are free and even recommended to communicate with expert partner authorities abroad, whether to make their own requests or if they have received a request from abroad via the Cantonal Central Authority. For example, there should be direct contact between a Swiss child protection authority and the relevant foreign child protection authority, a Swiss civil court and the relevant foreign court, and the competent child protection authority and its foreign counterpart.

**Please note:** Article 44 allows each Contracting State to determine the authorities to be addressed with requests under Articles 8, 9 (transfer of jurisdiction) and 33 (placement abroad). In terms of Article 34, a Contracting State may also declare that requests under that article may only be transmitted via its Central Authority. Details of the authorities designated by the States are available on the website of the Hague Conference.<sup>3</sup>

If you have any questions about the options and expediency of direct cooperation, please contact the Cantonal Central Authority; depending on the State concerned, it may be sometimes better to communicate via the Central Authorities rather than directly.

#### **5. Transmitting a request under the HC 96**

##### **a. Incoming cases (from abroad to Switzerland)**

Normally, the foreign Central Authority passes on a request from a competent foreign authority to the Swiss Federal Central Authority. The Federal Central Authority then forwards the request to the competent Cantonal Central Authority. This Authority either takes the required measures itself or passes the request on to the competent authority (for example the child and adult protection authority). If need be, the Cantonal Central Authority corresponds directly with the foreign Central Authority and, where necessary, requests the assistance of the Federal Central Authority. It is also possible for foreign authorities to contact the Cantonal Central Authority directly or even to contact the Swiss authority responsible for the case (see previous section).

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<sup>3</sup> <https://www.hcch.net/en/instruments/conventions/authorities1/?cid=70>



## **b. Outgoing cases (from Switzerland abroad)**

If the Cantonal Central Authority receives a request from an administrative or judicial authority in its Canton, it transmits it directly to the competent foreign Central Authority. The foreign Central Authority will then forward the request to the competent authority in that country. Direct communication between the responsible authorities of the two Contracting States is also possible in this case (see previous section).

## **6. Translations**

Documents transmitted or issued under this Convention are exempt from any legalisation or similar formality (Art. 43).

Communications sent to the Central Authority or another authority of a Contracting State shall be sent in the original language. They shall be accompanied by a translation in the official language or one of the official languages of the other State or, if a translation is not feasible, by a translation in French or English (Art. 54). A Contracting State may however make a reservation under Article 60 and object to the use of either French or English, but not both languages. A list of these reservations is published on the Hague Conference website.<sup>4</sup>

If there is any doubt about the required translations or the language to be used, it is best to contact the Cantonal Central Authority.

## **7. Costs**

Under Article 38, “Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter”. However, Article 38 also provides that authorities may “[impose] reasonable charges for the provision of services”. It is therefore possible that foreign authorities will demand payment of the costs if the Swiss authorities request a social report or other measures. Consequently, it is important to find out about any procedural fees from the foreign authority before making a request. For the sake of good international cooperation, it is in any case recommended that you avoid passing on costs to the foreign authority if at all possible - in particular when dealing with countries that do not demand the payment of costs (for example, France provides all social reports free of charge).

## **8. Application of the HC 96: examples of common cases**

In order to explain how the Convention works as clearly as possible, three difficulties that commonly arise are considered in the following remarks.

For further information and examples of how the Convention works in practice, you can consult the guide (*Practical handbook on the Operation of the 1996 Child Protection Convention*) available on the Hague Conference website.<sup>5</sup>

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<sup>4</sup> <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>

<sup>5</sup> <https://www.hcch.net/en/publications-and-studies/details4/?pid=6096&dtid=3>



### a. Notification of a measure taken abroad

*The child and adult protection authority (CAPA) of a Swiss Canton has ordered a measure to protect a child. The child then moves to country A, where the HC 96 is in force. The CAPA would like to “transfer” the protection measure to the authorities in State A. How do they go about this?*

The CAPA has two options:

- It can file its request with the Cantonal Central Authority, which then passes the request on to the Central Authority in State A.
- It can directly contact the Central Authority in State A or the authority responsible for the case in State A.

All the documents of relevance to the case must be attached to the request, along with a translation in the official language of State A.

The foreign authority will then decide whether the Swiss measure can continue (if need be in a modified form), whether a new measure is needed or whether no measure is required at all as a result of the current situation and the applicable domestic law. Until this decision is taken, the Swiss measure remains in force (Art. 14 HC 96).

*Variant: The child moves to State B, which is not a Contracting State.*

If the child is a Swiss citizen, the request and the required translations can be sent to the Federal Office of Justice. It will then pass the request on to the Swiss Embassy, which will transmit it to the local authority.

If the child is not a Swiss citizen, the Swiss authority responsible for the case can send the request and the required translations directly to the Embassy of the State concerned in Switzerland. It is important to explain clearly in an accompanying letter what the nature of and reasons for the measures taken in Switzerland are or other matters that justify the request (the relevant foreign law will not necessarily use the same terminology or recognise the same procedures as Swiss law).

Communication can also take place informally via the network of the SSI (Swiss Foundation of the International Social Service).<sup>6</sup>

### b. Exchange of relevant information for child protection

The HC 96 provides for a system of cooperation to make it easier to obtain and exchange relevant information in child protection cases. Based on this system, the authorities in a State with which the child has a substantial connection can for example request the authorities in the State where the child is habitually resident to provide a report on the child’s situation or to examine whether measures to protect the child are required (Art. 32 HC 96). An authority that wants to take a measure to protect a child can also request an authority in any other Contracting State that has information relevant to the child’s protection to communicate that information (Art. 34 HC 96).

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<sup>6</sup> International Social Service Switzerland ISS: <https://www.ssi-suisse.org/en>



As Contracting States are not obliged to provide this information, it is possible that requests from Swiss authorities will be rejected. In such cases, the Cantonal Central Authority should be contacted. **Please note:** Direct communication between authorities in Contracting States is possible unless one of the two States requires that requests be made via the Central Authority.

*After a couple of years in Switzerland, Clara's family decides to relocate to State A (a Contracting State). Her Swiss school has noticed that the child is living in difficult family surroundings and unhappy. The child protection authority is concerned about Clara's welfare and takes the view that protection measures are required. However, because the family has moved abroad, the Swiss authorities no longer have jurisdiction. What can they do in this situation?*

The Cantonal Central Authority (or the CAPA directly) can request the competent authorities in State A to evaluate Clara's situation and decide whether measures for her protection should be taken. All the relevant documents must be attached to the request along with a translation in the official language of State A.

### c. Placement of a child abroad

*The CAPA of a Swiss canton would like to place a child with a foster family in State A (a Contracting State). What does it have to do?*

In the case of such placements, the procedure in Article 33 HC 96 must be followed so that the process is recognised in State A (Art. 23 HC 96). Before the CAPA decides on the child's placement, it must consult the authorities in State A and send them a report on the child and reasons for the proposed placement. The competent authorities in State A must consent to the child's placement, taking account of his or her welfare, before the child can be placed. State A should also ensure that the child has the required residence permit for the duration of the placement. It is also important that the two States agree on which of them is to bear the costs. The CAPA can only order the placement if it has obtained consent from the authorities in State A.

Various states have made use of the reservation by which the authorities can specify which of them should receive requests under Article 33 (see section 4).

**Please note:** In the case of requests for the placement of a foreign child in Switzerland, the Swiss authorities concerned (immigration authorities, child and adult protection authority, Central Authority) must coordinate with each other in deciding whether to consent to the placement. For further information on this, please contact the Cantonal Central Authority.



## 9. Links and useful information

### Internet:

[Website](#) of the Federal Office of Justice, International child protection

[FA-ACA](#) and [dispatch](#) to the FA-ACA

Website of the Hague Conference:

[Text of the Convention](#)

[Outline of the Convention](#)

[Contracting States](#)

[Central Authorities](#)

[Explanatory report](#)

[Practical handbook](#)

[Guide to good practice on transfrontier contact](#)

[Guide to good practice on mediation](#)

### Swiss literature (Selection):

BUCHER Andreas, ad Art. 85 LDIP, in: Loi sur le droit international privé / Convention de Lugano, Commentaire Romand, Basel, 2011.

BUCHER Andreas, L'enfant en droit international privé, 2003, S. 177 ff.

JAMETTI GREINER Monique, Der neue internationale Kinderschutz in der Schweiz, in: FamPra 2/2008, S. 277 ff.

KREN KOSTKIEWICZ Jolanta, „Kleine Seelen, grosse Gefahr“: der Minderjährigenschutz im Internationalen Privatrecht der Schweiz im Überblick, in: Innovatives Recht: Festschrift für Ivo Schwander, 2011, S. 577–591.

SCHWANDER Ivo, Das Haager Kinderschutzübereinkommen von 1996, in: RDT 1/2009 S. 1 ff.

SCHWANDER Ivo, Kindes- und Erwachsenenschutz im internationalen Verhältnis, in: AJP 2014, S. 1351 ff.