

HCCH discussion paper on the operation of Article 15 of the 1980 Hague Child Abduction Convention

The Permanent Bureau of the Hague Conference on Private International Law (HCCH) has just issued a discussion paper on the operation of Article 15 of the 1980 Hague Child Abduction Convention for the attention of the *Special Commission meeting of October 2017 on the practical operation of the 1980 Child Abduction Convention and of the 1996 Child Protection Convention*.

Article 15 of the Child Abduction Convention reads as follows: “The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child **a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention**, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.” (our emphasis)

The paper proposes the following summary of possible measures to improve the application of Article 15:

- “Encouraging the availability of Article 15 decisions or determinations in all Contracting States;
- Encouraging clarification and improvement of internal Article 15 implementation with a view to making the procedures expeditious and effective;
- Enhancing the Country Profile under the 1980 Convention in relation to Article 15;
- Drafting of an Information Document on Article 15, which would also encourage:
 1. discretion in the use of the Article 15 mechanism and the use of

- alternatives;
2. the systematic use of Article 8(3)(f) and Article 14, and the use of direct judicial communications and the IHNJ, where appropriate;
- Drafting of an Article 15 Model Request Form;
 - Improving Central Authority practice in:
 1. facilitating the obtaining of decisions or determinations from competent authorities;
 2. encouraging more systematic inclusion of Article 8(3)(f) certificates / affidavits in applications, where deemed necessary;
 - Encouraging improved quality of the decisions or determinations (under Art. 15) and certificates or affidavits (under Art. 8(3)(f) (*e.g.*, through an Information Document and / or Model Request Form));
 - Encouraging greater international consistency in a number of identified areas, if feasible (*e.g.*, certain trends / approaches could be described in an Information Document drafted with the assistance of a Working Group; use of a questionnaire to Contracting States to collect additional information).”

Preliminary and Information Documents of the meeting are available at <https://www.hcch.net/en/publications-and-studies/details4/?pid=6545&dtid=57>. A draft agenda, as well as other Preliminary Documents including statistical information, will be uploaded in due course.

Please note that the meeting above-mentioned is open only to delegates or experts designated by the Members of the Hague Conference, invited non-Member States and International Organisations that have been granted observer status.