



Convention on contact concerning children

Strasbourg, 15.V.2003

Explanatory Report
Français

Preamble

The member States of the Council of Europe and the other Signatories hereto,

Taking into account the [European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children](#) of 20 May 1980 (ETS No. 105);

Taking into account the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and 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;

Taking into account the Council Regulation (EC) No. 1347/2000 of 29 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;

Recognising that, as provided in the different international legal instruments of the Council of Europe as well as in Article 3 of the United Nations Convention on the Rights of the Child of 20 November 1989, the best interests of the child shall be a primary consideration;

Aware of the need for further provisions to safeguard contact between children and their parents and other persons having family ties with children, as protected by Article 8 of the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) of 4 November 1950 (ETS No. 5);

Taking into account Article 9 of the United Nations Convention on the Rights of the Child which provides for the right of a child, who is separated from one or both parents, to maintain personal relations and direct contact with both parents on a regular basis, except when this is contrary to the child's best interests;

Taking into account paragraph 2 of Article 10 of the United Nations Convention on the Rights of the Child, which provides for the right of the child whose parents reside in different States to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents;

Aware of the desirability of recognising not only parents but also children as holders of rights;

Agreeing consequently to replace the notion of "access to children" with the notion of "contact concerning children";

Taking into account the [European Convention on the Exercise of Children's Rights](#) (ETS No. 160) and the desirability of promoting measures to assist children in matters concerning contact with parents and other persons having family ties with children;

Agreeing on the need for children to have contact not only with both parents but also with certain other persons having family ties with children and the importance for parents and those other persons to remain in contact with children, subject to the best interests of the child;

Noting the need to promote the adoption by States of common principles with respect to contact concerning children, in particular in order to facilitate the application of international instruments in this field;

Realising that machinery set up to give effect to foreign orders relating to contact concerning children is more likely to provide satisfactory results where the principles on which these foreign orders are based are similar to the principles in the State giving effect to such foreign orders;

Recognising the need, when children and parents and other persons having family ties with children live in different States, to encourage judicial authorities to make more frequent use of transfrontier contact and to increase the confidence of all persons concerned that the children will be returned at the end of such contact;

Noting that the provision of efficient safeguards and additional guarantees is likely to ensure the return of children, in particular, at the end of transfrontier contact;

Noting that an additional international instrument is necessary to provide solutions relating in particular to transfrontier contact concerning children;

Desiring to establish co-operation between all central authorities and other bodies in order to promote and improve contact between children and their parents, and other persons having family ties with such children, and in particular to promote judicial co-operation in cases concerning transfrontier contact;

Have agreed as follows:

Chapter I – Objects of the Convention and definitions

Article 1 – Objects of the Convention

The objects of this Convention are:

- a to determine general principles to be applied to contact orders;
- b to fix appropriate safeguards and guarantees to ensure the proper exercise of contact and the immediate return of children at the end of the period of contact;
- c to establish co-operation between central authorities, judicial authorities and other bodies in order to promote and improve contact between children and their parents, and other persons having family ties with children.

Article 2 – Definitions

For the purposes of this Convention:

- a "*contact*" means:

- i the child staying for a limited period of time with or meeting a person mentioned in Articles 4 or 5 with whom he or she is not usually living;
- ii any form of communication between the child and such person;
- iii the provision of information to such a person about the child or to the child about such a person.

b "*contact order*" means a decision of a judicial authority concerning contact, including an agreement concerning contact which has been confirmed by a competent judicial authority or which has been formally drawn up or registered as an authentic instrument and is enforceable;

c "*child*" means a person under 18 years of age in respect of whom a contact order may be made or enforced in a State Party;

d "*family ties*" means a close relationship such as between a child and his or her grandparents or siblings, based on law or on a *de facto* family relationship;

e "*judicial authority*" means a court or an administrative authority having equivalent powers.

Chapter II – General principles to be applied to contact orders

Article 3 – Application of principles

States Parties shall adopt such legislative and other measures as may be necessary to ensure that the principles contained in this chapter are applied by judicial authorities when making, amending, suspending or revoking contact orders.

Article 4 – Contact between a child and his or her parents

1 A child and his or her parents shall have the right to obtain and maintain regular contact with each other.

2 Such contact may be restricted or excluded only where necessary in the best interests of the child.

3 Where it is not in the best interests of a child to maintain unsupervised contact with one of his or her parents the possibility of supervised personal contact or other forms of contact with this parent shall be considered.

Article 5 – Contact between a child and persons other than his or her parents

1 Subject to his or her best interests, contact may be established between the child and persons other than his or her parents having family ties with the child.

2 States Parties are free to extend this provision to persons other than those mentioned in paragraph 1, and where so extended, States may freely decide what aspects of contact, as defined in Article 2 letter *a* shall apply.

Article 6 – The right of a child to be informed, consulted and to express his or her views

1 A child considered by internal law as having sufficient understanding shall have the right, unless this would be manifestly contrary to his or her best interests:

- to receive all relevant information;
- to be consulted;
- to express his or her views.

2 Due weight shall be given to those views and to the ascertainable wishes and feelings of the child.

Article 7 – Resolving disputes concerning contact

When resolving disputes concerning contact, the judicial authorities shall take all appropriate measures:

- a to ensure that both parents are informed of the importance for their child and for both of them of establishing and maintaining regular contact with their child;
- b to encourage parents and other persons having family ties with the child to reach amicable agreements with respect to contact, in particular through the use of family mediation and other processes for resolving disputes;
- c before taking a decision, to ensure that they have sufficient information at their disposal, in particular from the holders of parental responsibilities, in order to take a decision in the best interests of the child and, where necessary, obtain further information from other relevant bodies or persons.

Article 8 – Contact agreements

1 States Parties shall encourage, by means they consider appropriate, parents and other persons having family ties with the child to comply with the principles laid down in Articles 4 to 7 when making or modifying agreements on contact concerning a child. These agreements should preferably be in writing.

2 Upon request, judicial authorities shall, except where internal law otherwise provides, confirm an agreement on contact concerning a child, unless it is contrary to the best interests of the child.

Article 9 – The carrying into effect of contact orders

States Parties shall take all appropriate measures to ensure that contact orders are carried into effect.

Article 10 – Safeguards and guarantees to be taken concerning contact

1 Each State Party shall provide for and promote the use of safeguards and guarantees. It shall communicate, through its central authorities, to the Secretary General of the Council of Europe, within three months after the entry into force of this Convention for that State Party, at least three categories of safeguards and guarantees available in its internal law in addition to the safeguards and guarantees referred to in paragraph 3 of Article 4 and in letter *b* of paragraph 1 of Article 14 of this Convention. Changes of available safeguards and guarantees shall be communicated as soon as possible.

2 Where the circumstances of the case so require, judicial authorities may, at any time, make a contact order subject to any safeguards and guarantees both for the purpose of ensuring that the order is carried into effect and that either the child is returned at the end of the period of contact to the place where he or she usually lives or

that he or she is not improperly removed.

a Safeguards and guarantees for ensuring that the order is carried into effect, may in particular include:

- supervision of contact;
- the obligation for a person to provide for the travel and accommodation expenses of the child and, as may be appropriate, of any other person accompanying the child;
- a security to be deposited by the person with whom the child is usually living to ensure that the person seeking contact with the child is not prevented from having such contact;
- a fine to be imposed on the person with whom the child is usually living, should this person refuse to comply with the contact order.

b Safeguards and guarantees for ensuring the return of the child or preventing an improper removal, may in particular include:

- the surrender of passports or identity documents and, where appropriate, a document indicating that the person seeking contact has notified the competent consular authority about such a surrender during the period of contact;
- financial guarantees;
- charges on property;
- undertakings or stipulations to the court;
- the obligation of the person having contact with the child to present himself or herself, with the child regularly before a competent body such as a youth welfare authority or a police station, in the place where contact is to be exercised;
- the obligation of the person seeking contact to present a document issued by the State where contact is to take place, certifying the recognition and declaration of enforceability of a custody or a contact order or both either before a contact order is made or before contact takes place;
- the imposition of conditions in relation to the place where contact is to be exercised and, where appropriate, the registration, in any national or transfrontier information system, of a prohibition preventing the child from leaving the State where contact is to take place.

3 Any such safeguards and guarantees shall be in writing or evidenced in writing and shall form part of the contact order or the confirmed agreement.

4 If safeguards or guarantees are to be implemented in another State Party, the judicial authority shall preferably order such safeguards or guarantees as are capable of implementation in that State Party.

Chapter III – Measures to promote and improve transfrontier contact

Article 11 – Central authorities

1 Each State Party shall appoint a central authority to carry out the functions provided for by this Convention in cases of transfrontier contact.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one central authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one central authority, it shall designate the central authority to which any communication may be addressed for transmission to the appropriate central authority within that State.

3 The Secretary General of the Council of Europe shall be notified of any appointment under this article.

Article 12 – Duties of the central authorities

The central authorities of States Parties shall:

a co-operate with each other and promote co-operation between the competent authorities, including judicial authorities, in their respective countries to achieve the purposes of the Convention. They shall act with all necessary despatch;

b with a view to facilitating the operation of this Convention, provide each other on request with information concerning their laws relating to parental responsibilities, including contact and any more detailed information concerning safeguards and guarantees in addition to that already provided according to paragraph 1 of Article 10, and their available services (including legal services, publicly funded or otherwise) as well as information concerning any changes in these laws and services;

c take all appropriate steps in order to discover the whereabouts of the child;

d secure the transmission of requests for information coming from the competent authorities and relating to legal or factual matters concerning pending proceedings;

e keep each other informed of any difficulties likely to arise in applying the Convention and, as far as possible, eliminate obstacles to its application.

Article 13 – International co-operation

1 The judicial authorities, the central authorities and the social and other bodies of States Parties concerned, acting within their respective competence, shall co-operate in relation to proceedings regarding transfrontier contact.

2 In particular, the central authorities shall assist the judicial authorities of States Parties in communicating with each other and obtaining such information and assistance as may be necessary for them to achieve the objects of this Convention.

3 In transfrontier cases, the central authorities shall assist children, parents and other persons having family ties with the child, in particular, to institute proceedings regarding transfrontier contact.

Article 14 – Recognition and enforcement of transfrontier contact orders

1 States Parties shall provide, including where applicable in accordance with relevant

international instruments:

- a a system for the recognition and enforcement of orders made in other States Parties concerning contact and rights of custody;
- b a procedure whereby orders relating to contact and rights of custody made in other States Parties may be recognised and declared enforceable in advance of contact being exercised within the State addressed.

2 If a State Party makes recognition or enforcement or both of a foreign order conditional on the existence of a treaty or reciprocity, it may consider this Convention as such a legal basis for recognition or enforcement or both of a foreign contact order.

Article 15 – Conditions for implementing transfrontier contact orders

The judicial authority of the State Party in which a transfrontier contact order made in another State Party is to be implemented may, when recognising or declaring enforceable such a contact order, or at any later time, fix or adapt the conditions for its implementation, as well as any safeguards or guarantees attaching to it, if necessary for facilitating the exercise of this contact, provided that the essential elements of the order are respected and taking into account, in particular, a change of circumstances and the arrangements made by the persons concerned. In no circumstances may the foreign decision be reviewed as to its substance.

Article 16 – Return of a child

1 Where a child at the end of a period of transfrontier contact based on a contact order is not returned, the competent authorities shall, upon request, ensure the child's immediate return, where applicable, by applying the relevant provisions of international instruments, of internal law and by implementing, where appropriate, such safeguards and guarantees as may be provided in the contact order.

2 A decision on the return of the child shall be made, whenever possible, within six weeks of the date of an application for the return.

Article 17 – Costs

With the exception of the cost of repatriation, each State Party undertakes not to claim any payment from an applicant in respect of any measures taken under this Convention by the central authority itself of that State on the applicant's behalf.

Article 18 – Language requirement

1 Subject to any special agreements made between the central authorities concerned:

- a communications to the central authority of the State addressed shall be made in the official language or in one of the official languages of that State or be accompanied by a translation into that language;
- b the central authority of the State addressed shall nevertheless accept communications made in English or in French, or accompanied by a translation into one of these languages.

2 Communications coming from the central authority of the State addressed, including the results of enquiries carried out, may be made in the official language or one of the official languages of that State or in English or French.

3 However, a State Party may, by making a declaration addressed to the Secretary General of the Council of Europe, object to the use of either French or English under paragraphs 1 and 2 of this article, in any application, communication or other documents sent to their central authorities.

Chapter IV – Relationship with other instruments

Article 19 – Relationship with the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children

Paragraphs 2 and 3 of Article 11 of the European Convention of 20 May 1980 (ETS N° 105) on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children shall not be applied in relations between States Parties which are also States Parties of the present Convention.

Article 20 – Relationships with other instruments

1 This Convention shall not affect any international instrument to which States Parties to the present Convention are Parties or shall become Parties and which contains provisions on matters governed by this Convention. In particular, this Convention shall not prejudice the application of the following legal instruments:

- a the Hague Convention of 5 October 1961 on the competence of authorities and the applicable law concerning the protection of minors,
- b the European Convention on the recognition and enforcement of decisions concerning custody of children and on restoration of custody of children of 20 May 1980, subject to Article 19 above,
- c the Hague Convention of 25 October 1980 on the civil aspects of international child abduction,
- d 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.

2 Nothing in this Convention shall prevent Parties from concluding international agreements completing or developing the provisions of this Convention or extending their field of application.

3 In their mutual relations, States Parties which are members of the European Community shall apply Community rules and shall therefore not apply the rules arising from this Convention, except in so far as there is no Community rule governing the particular subject concerned.

Chapter V – Amendments to the Convention

Article 21 – Amendments

1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 22 and to any State invited to accede to this Convention in accordance with the provisions of Article 23.

2 Any amendment proposed by a Party shall be communicated to the European

Committee on Legal Co-operation (CDCJ), which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDCJ and, following consultation of the Parties to the Convention, which are not members of the Council of Europe, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter VI – Final clauses

Article 22 – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Community.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4 In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 23 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 *d.* of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 24 – Territorial application

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the

territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 25 – Reservations

No reservation may be made in respect of any provision of this Convention.

Article 26 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 27 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 22 and to any State invited to accede to this Convention in accordance with the provisions of Article 23 of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 22 and 23;
- d any amendment adopted in accordance with Article 21 and the date on which such an amendment enters into force;
- e any declaration made under the provisions of Article 18;
- f any denunciation made in pursuance of the provisions of Article 26;
- g any other act, notification or communication, in particular relating to Articles 10 and 11 of this Convention.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy, which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.