

SERVICE FIRST, CHALLENGE LATER: SWISS SUPREME COURT SHUTS THE DOOR ON DIRECT APPEALS AGAINST CROSS-BORDER SERVICE

In a decision dated 6 August 2026 (4A_174/2026, intended for publication), the Swiss Federal Supreme Court settled a question it had previously left open. Under the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Service Convention"), the addressee of foreign judicial documents has no right to challenge the decision by which a Swiss central authority grants or refuses a request for service.

The Court held that the parties to the main foreign proceedings are not parties to the international service procedure. As a result, they can neither appeal the central authority's decision nor demand a formal, appealable decision on the request. Service is therefore not submitted to any prior judicial review, and the addressee can only challenge a defective service process within the proceedings on the merits or at the stage of enforcement. The ruling confirms the speed-oriented purpose of the Hague Service Convention and clearly separates international service from the taking of evidence under the Hague Evidence Convention.

FACTUAL BACKGROUND

The dispute arose between a Swiss company based in Basel (the "**Appellant**") and a UK limited partnership (the "**Respondent**"). On 19 September 2025, the Respondent filed requests to have judicial documents from two proceedings pending in the United Kingdom served on the Appellant under the Hague Service Convention. The requests were addressed to the Court of Appeal of the Canton of Basel-Stadt, which acts as the cantonal central authority.

According to the Appellant, both parties filed extensive submissions with the central authority, including several legal opinions. The central authority nevertheless granted the requests without notifying the Appellant of its decision. On 4 March 2026, it had the documents served on the Appellant through the Civil Court of Basel-Stadt. It did so even though the Appellant had repeatedly and expressly asked for an appealable decision on the request. A certificate of service was issued on 5 March 2026.

The Appellant then used every remedy available before the Civil Court and the Court of Appeal. All its submissions were dismissed or returned without a decision on the merits. The Court of Appeal only stated that the Hague Service Convention provides for no right to an appealable decision and that the act of service is a purely factual act that cannot be challenged within the course of the mutual assistance process. In a letter dated 9 April 2026, it informed the Appellant that service had been completed on 4 March 2026 and that the proceedings were therefore closed.

The Appellant appealed to the Swiss Federal Supreme Court. It sought to have the decisions, the certificate of service and the service itself set aside, the requests rejected, and the documents returned to the requesting authority. Procedurally, it argued that its right to be heard, the guarantee of access to the courts and the principle of equal treatment had all been violated. In the alternative, it alleged a formal denial of justice since no challenge would be allowed during the service process within the ambit of the mutual assistance process. On the merits, it argued that the service breached the Hague Service Convention.

SWISS SUPREME COURT'S RULING

THE ACT OF SERVICE IS NOT AN APPEALABLE DECISION

The Supreme Court first confirmed that service through judicial assistance is not, in itself, appealable. It is a factual act by which a legal act is transmitted, meaning the mere handing over of documents to the addressee (c. 2.1.2.1 ; see also TF, 4A_89/2025, 16.6.2025, c. 2.2.3).

The Court acknowledged, however, that service is an act of state sovereignty. Under the principle of territoriality, it can in principle only take place within the territory of the forum state. Performing official acts on foreign territory infringes that state's sovereignty and, in Switzerland, is a criminal offence under Art. 271(1) of the Swiss Criminal Code (SR 311.0) (c. 2.1.2.1).

The requested state's authorities must therefore examine whether the conditions for service are met. That examination ends with a decision to grant assistance and carry out service, or to refuse it (c. 2.1.2.1).

The decisive question was therefore whether the parties to the main foreign proceedings take part in this procedure and are entitled to an appealable decision.

OPEN QUESTION NOW RESOLVED

The Court noted that Swiss legal scholars generally accept that the addressee can appeal the granting and carrying out of service, even after the certificate of service has been issued. In Germany, too, scholars and case law hold that the central authority's decision can be challenged as a judicial administrative act (c. 2.1.2.2). The Supreme Court had previously left the question open, while describing an appeal as "highly questionable" (cf. TF, 4A_89/2025, 16.6.2025, c. 3; TF, 4A_257/2019, 1.7.2020, c. 3.3.4).

The Court has now rejected any direct right of appeal. Its reasoning rests on several grounds:

- **No legal grounds in the Convention:** The Hague Service Convention only governs the channels of transmission between states. Apart from Art. 15 and 16, it says nothing about the validity of service or the consequences of a violation of its provisions, and it provides no remedy against the central authority's decision (c. 2.1.2.3).
- **Individual protection operates *ex post*:** Art. 15 and 16 of the Hague Service Convention protect the defendant's rights of defence. They require a stay of the main proceedings and allow relief from default judgments where service was not timely. These provisions, however, only deal with the consequences of defective service. They bind the court of the requesting state, not the authorities of the requested state. It is for the states alone to decide whether and to what extent they give up their sovereignty. The procedure is one that is administrative and inter-state where the parties to the main proceedings are, in principle, not involved and are only indirectly affected (c. 2.1.2.3).
- **Expeditious service and *effet utile*:** The Convention was adopted to "speed up" and simplify international service, replacing the slow consular channel of the 1954 Hague Convention on Civil Procedure. Granting a right to be heard and an appeal for every act of service would undermine this goal. The claimant in the foreign proceedings would also have to be heard, which might itself require service abroad. This would cause significant delays and a multitude of ancillary proceedings and would ultimately threaten the *effet utile* of the Convention (c. 2.1.2.4).

- **Limited review by central authority:** The central authority only conducts a summary review. It checks compliance with the Convention's formal requirements (Art. 4), whether the matter is civil or commercial (Art. 1(1)), and whether carrying out the request would infringe the requested state's sovereignty or security (Art. 13(1)). It may not assess the merits of the underlying dispute. Since the grounds of appeal could not go beyond this limited review, a direct right of appeal would serve little purpose. Formal defects are examined *ex officio*, and the protection of sovereignty and security serves the public interests of the requested state rather than offering individual legal protection (c. 2.1.2.4).

NO ANALOGY WITH THE HAGUE EVIDENCE CONVENTION

The Court rejected the Appellant's comparison with its case law under the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the "**Hague Evidence Convention**"). Under that case law, decisions granting or refusing a request for evidence can be appealed. According to the Court, there are objective reasons to distinguish between the two conventions. While the Hague Evidence Convention gives the parties individual rights that are directly affected (such as the right to refuse to testify under Art. 11, and the right to attend the hearing under Art. 7), the efficiency of the whole international judicial assistance system depends on judicial documents being served as quickly as possible, without additional procedural steps or appeals to delay the proceedings (c. 2.1.2.5).

OUTCOME

The Court held that the Hague Service Convention affords the parties to the main proceedings no remedy within the service procedure. Whether the contested orders, the certificate of service or any unnotified decision qualified as a judicial-assistance decision was therefore irrelevant, as none was appealable. Nor could the addressee claim a denial of justice, since it had no right to an appealable decision. The Court accordingly declared the appeal inadmissible (c. 2.1.4 and 3).

KEY TAKEAWAYS

The decision clarifies a question that was long debated in Swiss (and German) legal literature. It aligns Swiss practice with the Convention's aim of fast and simple cross-border service.

For parties involved in cross-border disputes, the main points of guidance are as follows:

- **No prior legal protection against incoming service:** Swiss addressees of foreign judicial documents served under the Hague Service Convention cannot stop service by objecting to or appealing the central authority's decision. They are also not entitled to be heard before service or to receive a reasoned, appealable decision within the course of that process.
- **Objections must be raised in the main proceedings:** The proper forums for raising service defects are the main foreign proceedings and, where relevant, later recognition and enforcement proceedings in Switzerland.
- **Defective service shall not be ignored, immediate actions are recommended:** While defective service cannot be appealed immediately, the party in receipt should not remain moot or inactive. Some actions should be taken promptly to ensure no loss of any rights and secure its position with the arguments that will be required at a later stage of the proceedings.
- **Keep evidence and document service:** First, the party must keep all records related to the service (keep all documentary evidence: official documents, date of receipt and document the process) as those will be necessary in a potential subsequent appeal;
- **Check requirements in the enforcement jurisdictions:** it is worth making an early check at this part of the process of the requirements to be met to challenge the service defects at the stage of enforcement in the relevant jurisdictions for such enforcement. This allows the party to take any measures required to preserve its ability to raise those defects in subsequent enforcement proceedings.
- **Consider remedies in the originating jurisdiction:** Determine whether the service defects can be raised before the court hearing the merits and what procedural steps are available in that jurisdiction.
- **Possible criminal law implications in Switzerland:** In addition to a defective service process under the mutual assistance channel, defect in service can also arise from an incorrect service channel triggering additional consequences. Typically, if service was effected outside the channels authorized under the Hague Service Convention, the acts performed in Switzerland could amount to prohibited acts on behalf of a foreign state under Article 271 of the Swiss Criminal Code. Any potential criminal law concerns should be reviewed promptly and separately from objections to the validity of service to the Hague Service Convention.

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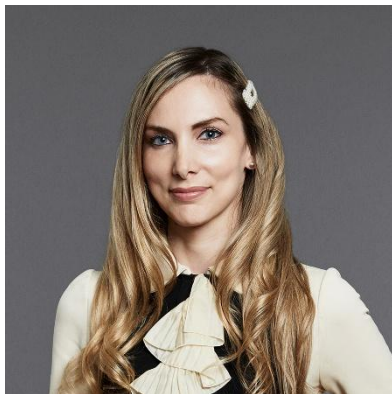


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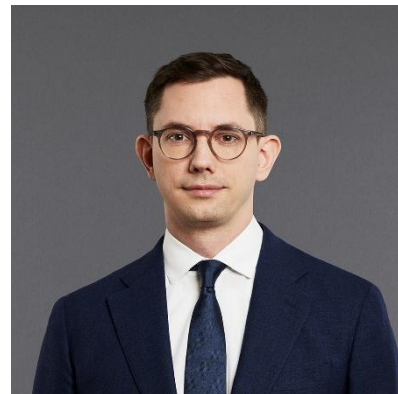


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