

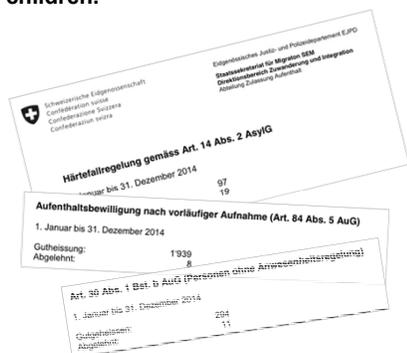
# Best Interests Determination

## The Case of Sans-Papiers Children in Switzerland

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This research project will raise awareness about the situation and rights of sans-papiers children in Switzerland.

The research findings aim to inform policy debate about children's right to be heard and how the best interests of the child should be considered in decisions affecting sans-papiers children.



### Research Questions

Article 3 of the UN Convention on the Rights of the Child (CRC) states that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child** shall be a primary consideration."

1. Which procedural safeguards ensure the child's right to be heard and to have their views given due weight?
2. To what extent do substantive decisions reflect the best interests of the child?
3. How is the best interests principle applied in hardship cases concerning sans-papiers children?
4. How can Swiss law, policy and practice be further developed in order to provide a **Best Interests Determination** for sans-papiers children in Switzerland in line with international obligations and good practice standards?

### The child's right to be heard and to have their views given due weight

The Committee on the Rights of the Child has stated that the right of children to freely express their views constitutes one of the most essential components of children's dignity and has stressed that ensuring this right is a legal obligation under the Convention, which is not open to the discretion of State parties.

The Committee has raised concerns that this right is not systematically ensured and implemented in practice in all matters that affect children and that cantonal disparities exist in implementation in Switzerland.

This is an area of law and practice that is currently evolving in Switzerland and in other European countries.

**Methods** will include standard legal research techniques:

- presentation and analysis of relevant International, European & Swiss Law
- review of relevant case law
- comparative legal approach

### Which elements to consider when determining the best interests of the child?

- Care, protection and safety of the child
- Child's views
- Child's identity
- Parents' and current caregiver's views
- Preservation of the family environment
- Maintaining or restoring relationships
- Situation of vulnerability
- Child's right to health
- Access to education



Image source: SOS Children's Villages

