

International Child Protection Projects

European Judicial Training Network (EJTN) – Seminar on Child Abduction

Prague, Czech Republic, 10-11 May 2012

On 10 and 11 May 2012, the European Judicial Training Network (EJTN) held its first seminar in the area of civil justice co-operation. "Family Law and Child Abduction" was the subject of the seminar which took place in Prague and was attended by 54 Judges representing all 27 Member States of the European Union.

The EJTN is the principal platform and promoter for the development, training and exchange of knowledge and competence of the European Union judiciary. Founded in 2000, EJTN develops training standards and curriculum, co-ordinates judicial training exchanges and programmes and fosters co-operation between European Union national training bodies. Since 2012, the EJTN has added the area of civil justice co-operation to its activities.

The one and a half-day seminar was divided in three parts. Part 1 focused on the legal framework and case law of the European Court of Justice and the European Court of Human Rights concerning child abduction. Presentations were made on: the 1980 Hague Child Abduction Convention and the Brussels IIa Regulation; rights of custody; the concept of habitual residence; grave risk (Art. 13 b) of the 1980 Hague Child Abduction Convention); preliminary measures in the State of origin. Part 2 consisted of workshops in which participants discussed case studies. During Part 3 presentations were made of different institutions, programmes and tools that can assist judges whilst handling return proceedings. Presentations covered: the role of Central Authorities; Network Judges and direct judicial communication; mediation; the International Child Abduction Database (INCADAT); and, the Schengen Information System (SIRENE).

The seminar was a success thanks to a well organised and experienced EJTN and well qualified speakers.

2nd Meeting of the Central American Judicial Council (CJC)

Antigua, Guatemala, 26-27 June 2012

The Central American Judicial Council (CJC) is an official body of the System of Central American Integration (SICA). Its membership is composed of the Presidencies of the Supreme Courts of: Costa Rica, El Salvador, the Dominican Republic, Guatemala, Honduras, Nicaragua,

Panamá, and Puerto Rico. The general purpose of the CJC is the integration of policies in matters of Application of Justice and Legal Certainty, through the establishment of permanent coordination channels and the adoption of institutional commitments.

The Liaison Legal Officer of the Hague Conference for Latin America, Mr. Ignacio Goicoechea, was invited to the meeting to present the Hague Children's Conventions and Legal Cooperation Conventions. The presentation was welcomed by participants who realized the importance of developing international judicial cooperation and that the work of the Hague Conference in this field would be an effective means to harmonize solutions at both the regional and global level. With regards to the Hague Conference, it was agreed that the CJC should explore the best way to follow up on these matters so as to facilitate the analysis and possible incorporation of these Conventions in the region.

Finally, it should be noted that the CJC runs a Judicial Training Centre for Central America and the Caribbean (Centro de Capacitación Judicial para Centroamérica y el Caribe), which was represented at the meeting, and showed interest in the Hague Conference's work as well as in exploring possibilities for cooperation with its International Centre for Judicial Studies and Technical Assistance.

The 2012 International Family Justice Judicial Conference

Hong Kong (28-31 August 2012)

Conclusions and Recommendations

From 28 to 31 August 2012, some 100 judges and other experts from Australia, the Bahamas, Bangladesh, Canada, China (mainland and Hong Kong Special Administrative Region, "SAR"), Cyprus, Germany, India, Indonesia, Ireland, Israel, Japan, Kenya, Republic of Korea, Malaysia, Netherlands, New Zealand, Nigeria, Pakistan, Papua New Guinea, Philippines, Singapore, Sri Lanka, Thailand, Trinidad and Tobago, Uganda, United Kingdom, United States of America, Zimbabwe, including experts from the Hague Conference on Private International Law, met in China (Hong Kong SAR) to discuss issues of international family justice, including the role of judges in resolving cross-border family disputes and, in particular, cross-border disputes involving children.

WHEREAS the participating jurisdictions:

- a) Recognise as forerunners to this Conference, the "Judicial Conference for Common Law Jurisdictions" held in Washington D.C., USA in 2000 and the "International Family Justice Judicial Conference for Common Law and Commonwealth Jurisdictions" held at Cumberland Lodge, England in 2009 and reiterate their commitment to continuing this process;
- b) Acknowledge the continuing increase in the number of

cross-border family disputes and the importance of the role of the judiciary in resolving these cases;

- c) Consider the building of mutual respect and understanding between judges as crucially important for the development of international family justice;
- d) Recognise that it is important to provide continuity in the participation of the judiciary in international family justice and that, as a result of several participants announcing their intended retirement from the judiciary or from their positions in international family justice, it will be important to ensure their succession by judges specialised in international child protection matters.

IT IS CONCLUDED THAT:

1. In accordance with Resolution (1) of the 2009 International Family Justice Judicial Conference for Common Law and Commonwealth States, the participating jurisdictions shall hold the fourth tri-annual International Family Justice Judicial Conference for Common Law and Commonwealth States in 2015. For this purpose, a Standing Working Group shall be established forthwith in order to undertake the preparations for the next Conference. It is recognised that the host country has a discretion to invite States which are not common law or Commonwealth States in their region to these meetings.
2. Adequate resources, including administrative and legal resources, should be made available to support the work of judges in international family justice. In addition, where appropriate, States should consider establishing an office to support the work of the judiciary in international family justice and, in particular, those designated as a contact in their jurisdiction for cross-border disputes, including Members of the International Hague Network of Judges (hereinafter, the "IHNJ").
3. A meeting of the IHNJ, which will coincide with the 15th anniversary of its launch, will take place at Cumberland Lodge from 17 to 20 July 2013. The meeting, for which a provisional agenda has been developed, is a welcome initiative which will enable judicial participants to discuss important issues of international family justice and cross-border judicial co-operation.
4. The future opening of the Asia Pacific Regional Office of the Hague Conference on Private International Law will be extremely valuable to promote the work of the Organisation and to assist States in the region with their consideration and implementation of the Hague Conventions. The strong presence of delegates from the Asia Pacific region at this Conference reinforces the importance of this initiative.
5. The presentations from India, Pakistan and Bangladesh in the Indian sub-continent, none a State Party to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the 1980 Hague Convention"), demonstrate a positive judicial approach to the resolution of cross-border family disputes in these jurisdictions which is welcomed by the Conference, as is their continuing positive consideration of accession to the Hague Children's Conventions.
6. The importance and utility of the Hague Children's Conventions for the African region should continue to be emphasised. The participants from Africa underline that the work of the Hague Conference on Private International Law in promoting the Hague Children's Conventions in the region should continue to receive support.
7. The 1980 Hague Convention requires swift procedures at all stages of an application for the return of a child: that is, at the Central Authority, trial court and any appeal stages. The participants expressed interest in the new Dutch timeframe which provides for a 6 week maximum time-limit for each of their three stages.
8. The continuing increase in the number of international family disputes across the globe highlights the importance of 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 ("the 1996 Hague Convention") and similar bilateral protocols in international family law. In this respect, participants encourage those States which are not yet Party to the 1996 Hague Convention to give, or continue to give, their active consideration to it.
9. States that have not yet designated a judge to the IHNJ are encouraged to do so forthwith. The interest expressed by a number of States represented at the meeting in designating a judge to the IHNJ is welcomed.
10. States that are not yet Party to the 1980 or 1996 Hague Conventions are actively encouraged to designate a judge to the IHNJ.
11. The benefit to international child protection cases of direct judicial communications, in particular communications facilitated by Members of the IHNJ, has been demonstrated over many years. The practical experience shared during the meeting was considered to be extremely helpful to all participants. The wide dissemination of this experience internationally was encouraged.
12. The general endorsement given by the Sixth meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions (Part I held from 1 to 10 June 2011, and Part II held from 25 to 31 January 2012) to the Emerging Guidance and General Principles for Judicial Communications is welcomed and judges are encouraged to refer to the Guidance and the General Principles where necessary in cases. The Guidance and General Principles should be disseminated as widely as possible internationally with a view to raising awareness of direct judicial communications generally and the safeguards available surrounding it.
13. The Central Authorities designated under the 1980 and 1996 Hague Conventions are encouraged to take a proactive view to their role under the Conventions and to fulfil their duties to the fullest extent. In this respect, Central Authorities are encouraged to provide all possible support to their International Hague Network Judge(s) where requested.
14. Where possible and appropriate, the executive should consult with the court(s) dealing with international family law matters on proposed legislation in this area which will affect the court(s).

15. Since Resolution (8) of the 2009 International Family Justice Judicial Conference for Common Law and Commonwealth States, there has been significant progress in the field of international family relocation, including the adoption of the "Washington Declaration" (resulting from The International Judicial Conference on Cross-Border Family Relocation, held in Washington D.C., USA, from 23 to 25 March 2010). The participants of this meeting see every merit in moving to a more certain system in order to resolve international family relocation disputes. The form of that system should now be given consideration. In this respect, and in light of paragraphs 83 to 85 of the Sixth meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions, the conclusions of specialist academics in the field regarding guidelines, resolutions or presumptions for international family relocation are noted by the meeting. Future inter-disciplinary work in this field is encouraged.
16. The material produced as a result of this meeting will benefit the practice and procedure of the courts in the represented States. These materials will be made available electronically to participants in a form to be decided. Participants are encouraged to continue to produce relevant materials to Members of the IHNJ and other participants to the International Family Justice Judicial Conference for Common Law and Commonwealth States where relevant between the tri-annual Conferences.
17. The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption ("the 1993 Hague Convention") instils principle into international adoption and properly regulates this sensitive area. States that are not yet Party to the 1993 Hague Convention are urged to actively consider ratification of, or accession to, this Convention.
18. The difficulties concerning the legal status of the children born as a result of international surrogacy arrangements and the broader concerns arising in respect of such arrangements, including the need to protect all parties to such arrangements from exploitation and abuse, and the need to protect the children born as a result of such arrangements, are apparent from the global jurisprudence. As a result, participants consider that there is a need to put in place regulation, at an international level, regarding international surrogacy arrangements. The meeting welcomes and strongly supports the work that the Hague Conference on Private International Law is doing in this field acknowledging the diversity in domestic laws.
19. Reaffirming the Conclusions at paragraphs 48 to 49 of the Sixth meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions, and in light of the continuing jurisprudence from the European Court of Human Rights concerning the 1980 Hague Convention, participants voice concern that these judgments do not seem to appreciate the fundamental principles of this Convention.

9th German-Anglophone Judicial Conference

Thun, Switzerland (26-28 September 2012)

Chair Summaries and Conclusions

The **German-Anglophone Judicial Conference** emphasizes the importance of the following summaries by the session chairs:

Recent developments in family law (Lorenz Meyer)

On all levels and in all fields, family law looks much like a building site with especially a certain focus on custody rights. There is a tendency towards awarding joint parental custody to parents irrespective of their marital status. The length of proceedings is an essential topic: proceedings should be speedy, because children have a different perception of time than adults. That is an important consideration. While interim measures may bring temporary relief, final decisions on the merits take time. However, courts ought not to be exposed to exaggerated expectations, in particular in child abduction cases and in the State of abduction.

Diverging views were expressed as to what role sanctions should play where contact or custody rights are frustrated. Criminal measures (up to and including coercive detention) are problematical but may make sense in individual cases. Equally, it is felt that there is no sense in dispensing altogether with reactions to breaches of contact or custody orders. There are limits to what can be achieved by the imposition of pecuniary damages in this context, in particular where the defaulting parent is unable to pay. A view was expressed that it is useful for courts to have discretion to use a broad array of sanctions and tools.

Particularly in the field of custody rights, legal cultures continue to differ significantly throughout Europe. Efforts to harmonize legal regimes must take this into account.

HC 1980 and 1996: Challenges and potential (Lorenz Meyer)

The discussion reflects profoundly many aspects of the difficult relationship between the courts of the State of abduction and those in the State of origin. Open questions remain regarding the requirements of the ECtHR, which meet with both criticism and understanding. It is suggested that German and English speaking Judges from the ECtHR might be invited to a future meeting of this Conference.

International family mediation (Eberhard Carl)

The introductory paper highlights that - and how - decisions, even in proceedings under the Hague Abduction Convention can be focused on the interests of the individual child. This ought to be a central concern in mediation, but also for judges and others involved in this area. Judges play a

particularly important role in motivating parents towards mediation, but Central Authorities can also, at an earlier stage, be instrumental in making pre-trial mediation possible. Courts, the professionals involved as well as mediators need to study carefully the relevant international instruments and conventions. In this context, the new Swiss Federal Law concerning child abduction deserves particular attention because it empowers the courts to order mediation in Hague Convention abduction cases. Reports from practice have however highlighted the difficulties related to such powers, but many of these can surely be solved.

Nevertheless, unresolved questions remain regarding the international jurisdiction for, and (related to this) the international recognition of court-approved mediated agreements. Solutions in this field require flexibility, courage and new initiatives, in particular on the part of the courts.

Judicial Communication (Sabine Brieger)

In recent years, direct judicial communication has assumed an ever increasing importance. Discussion on this topic will surely continue. Its institutionalization is desirable in the interest of enhancing the trust of the parties and judges involved in the process. Direct judicial communication has a particular role to play in helping to comply with the six weeks requirement pursuant to the Brussels IIa Regulation and the requirement of speedy proceedings under the Hague Abduction Convention. Moreover, it is instrumental in the transfer of international jurisdiction pursuant to Art. 15 Brussels IIa and Art. 8 and 9 HC 1996 as well as in international relocation cases.

The official designation of liaison judges in the context of the Hague Conference is desirable since it ensures the identification of a live point of contact within the Contracting States of the Hague Abduction Convention and the Hague Child Protection Convention.

Liaison judges can in particular cases serve to provide practical advice based on personal expertise or to establish a cross-border contact.

Relocation - from theory to practice (Christine Miklau)

The introductory paper highlights that along with the child's best interests, parent autonomy is an important principle and consideration in cases of international relocation. It also cautioned against setting the status quo in family relations in stone. In addition, it suggested that the reflection on the subject take into account the relocation of the parent with whom the child does not live.

The country reports show that important legislative change is imminent in Switzerland and Austria in particular. As joint custody gets widespread, coupled with possibly significant limitations of the freedom of a parent (with whom the child lives) to relocate, a surge of cases is likely to flood the court system. In this context, it would be pretentious to generally

assume that courts are in a better position to take sound decisions than parents.

To sum up, hardly a topic in the international discussion is more closely linked to the daily concerns of families and couples than international relocation. Hence, it would be all the more desirable - the drawbacks of the Special Commission on the HC 1980 and 1996 notwithstanding - to encourage international discourse and exchange of experts coming from a variety of disciplines in order to possibly achieve a more uniform approach to the solution of the problem internationally.

Marital property regimes and prenuptial agreements (Henry Abbott)

All jurisdictions had different matrimonial property regimes. A common thread was that parties were increasingly anxious to make private arrangements for the ownership and division of property during the marriage and finally, at divorce. The most recent development in this area was the decision of the Supreme Court of the United Kingdom in the England and Wales Appeal in *Radmacher* allowing the consideration of a prenuptial agreement in divorce. These arrangements in most jurisdictions did not preclude the overall supervision of the Courts in relation to aspects of fairness and meeting of needs.

The need for parties to take advice on many of these arrangements to prevent unintended harmful consequences was highlighted.

Considerable discussion focused on the difficulties posed by judges having to decide matrimonial cases in accordance with foreign law and the pros and cons of a removal of such cases to a judge who could decide them in accordance with domestic law was canvassed.

The long awaited finalisation of the draft EU regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes of March 2011 (COM/2011/0126 final) directed the debate to consider challenges (and advantages) for the courts arising there under.

The prospect of a fast developing practical Court context arising from both speakers' contributions, and the extensive and vigorous discussions thereafter, pointed strongly to the need for the "Anglophone-Germanophone" to monitor this situation in detail, and address difficulties arising in future meetings.

As in previous conferences, the **9th German-Anglophone Judicial Conference** offered, in addition to the chair summaries set out above, a multiplicity of clarifying problem-analysis as well as approaches and solutions. Three deserve particular mention:

In the framework of the 1980 Hague Convention, the return remedy is not effective unless it is swift. The Conference observes the worldwide tendency towards longer return proceedings with concern.

In the case of lawful temporary international relocation the participants observe the need for clarification, in particular in relation to the legal consequences (especially habitual residence, the question of continuing international jurisdiction and the application of the Hague Child Abduction Convention).

The participants regret the economic restrictions which have been observed in the field of mediation procedures. In particular legal aid should be available at the least in international child issues.

Thun, 8 September 2012