

Overview and Benefits of the International Hague Network of Judges (IHNJ)

Malta, 3 May 2016

Philippe Lortie, First Secretary, HCCH
Judge Javier Forcada, Member of the IHNJ for Spain

BIRTH OF THE IHNJ

1998 - "Designation of one or more members of the judiciary to act as a channel of communication and liaison with their National Central Authorities, with other judges within their jurisdictions and judges in other Contracting States to deal with *1980 Hague Child Abduction Convention* cases"

IHNJ & DIRECT JUDICIAL COMMUNICATIONS (DJC)

- Tool serving better co-operation and coordination to “oil” cross-border child protection systems: active intermediation
- Practical tool to promote a consistent application and interpretation of international instruments
- Time saving tool allowing better use of resources available to ensure adequate care

IHNJ & DJC FRAMEWORK

2012 – Endorsement by States Parties to the 1980 *Hague Child Abduction Convention* and Members of HCCH of the:

“Emerging Guidance for the development of the IHNJ and General Principles for Direct Judicial Communications including commonly accepted safeguards for Direct Judicial Communications in specific cases within the context of the IHNJ”

DIRECT JUDICIAL COMMUNICATIONS SAFEGUARDS

Respect for the rule of law - Principle No 6.1

6.1 Every judge engaging in direct judicial communications must respect the law of his or her own jurisdiction.

Judicial independence - Principles Nos 6.2 & 6.3

6.2 When communicating, each judge seized should maintain his or her independence in reaching his or her own decision on the matter at issue.

6.3 Communications must not compromise the independence of the judge seized in reaching his or her own decision on the matter at issue.

DIRECT JUDICIAL COMMUNICATIONS SAFEGUARDS

Due process safeguards - Principles Nos 6.4 & 6.5

6.4 In Contracting States in which direct judicial communications are practised, the following are commonly accepted procedural safeguards:

- *except in special circumstances*, parties are to be notified of the nature of the proposed communication;
- a record is to be kept of communications and it is to be made available to the parties;
- any conclusions reached should be in writing;
- Parties or their representatives should have the opportunity to be present in certain cases, for example via conference call facilities.

6.5 Nothing in these commonly accepted procedural safeguards prevents a judge from following rules of domestic law or practices *which allow greater latitude*.

DIRECT JUDICIAL COMMUNICATIONS EXAMPLE (1)

Hague Network Judges channelling incoming and outgoing communications to facilitate communications between judges involved: RETURN CASE (GERMANY –SPAIN) February 2016

German Judge Court of Hamburg- Bergedorf after settling case return (father agreed that the child should stay in Germany with the mother) wants to know how to proceed with child support issues (there are child support proceedings pending in Germany and Spain in First Instance Court Tenerife). German Judge, not able to speak or write in Spanish, asked 9 questions to the Spanish sitting judge and offered to communicate directly with Spanish Judge in English by mail or phone.

Spanish and German Hague Judges liaised the contact: German Hague Judge on behalf of German sitting Judge sent an email in English to Spanish Hague Judge that forwarded that email and contacted by phone with Spanish sitting Judge, able to answer in English by email questions directly to German sitting Judge.

DIRECT JUDICIAL COMMUNICATIONS EXAMPLE (2)

Hague Network Judge as the Judge involved in the communications itself:

14th March 2016: Belgian Hague Judge sent an email in English to Spanish Hague Judge on behalf of a Belgian Judge in youth protection matters that is planning to make an end to a foster placement of a 9-year -old child, in order to let her go and live in Spain with her Spanish father. Before doing this, Belgian judge wants however to get a view on the morality and life-situation of this man. Belgian Hague Judge on behalf of his colleague wanted to be sure that Spanish Hague Judge would confirm the most efficient way to get this investigation in Spain, asking the practice in Spain.

15th March 2016: Spanish Hague Judge answered by email in English that if Belgian judge has jurisdiction to deal with the substance of the mater and plans to change custody rights probably Regulation on taking of evidence abroad would be useful but whiteout undermining the possibility of obtaining cooperation of central bodies under R. 2201/2003.

DIRECT JUDICIAL COMMUNICATIONS EXAMPLE (3)

Hague Network Judge and General Judicial Communications: responsibilities with foreign Judges – may provide responses to focussed enquiries from foreign judges concerning legislation and their operation on international child protection in their jurisdiction:

September 2015: In common law countries, there has been a practice of getting an undertaking from the left behind parent about what he will do for the abducting parent and child on return. An undertaking is a formal promise made by the left behind parent to the court ordering return.

Concerning this topic the Australian Hague Judge sent an email in English to Spanish Hague Judge asking five questions:

First, do courts in Spain accord any status to undertakings by litigants before them? That is, would you rely on something occurring based on a promise made by a litigant that he would or would not do something?.....

Spanish Hague Network answered questions by email in English within 4 days.

DESIGNATIONS TO THE IHNJ

- 1.1 States that have not designated Network Judges are strongly encouraged to do so.
- 1.2 Judges designated to the Network with responsibility for international child protection matters should be sitting judges with authority and present experience in that area. Competent authorities responsible for making such designations vary from State to State. Examples of these competent authorities include judicial councils, supreme courts, chief justices, assemblies of judges or, sometimes, the Ministry of Justice or other relevant government department.
- 1.3. The process for the designation of Network Judges should respect the independence of the judiciary.

DESIGNATIONS TO THE IHNJ

- 1.4 Designation of Network Judges in States that are not Parties to the Hague Children's Conventions is also encouraged.
- 1.6 Where possible, designations should be for as long a period as possible in order to provide stability to the Network while recognising the need to have new members join the Network on a regular basis. It is established practice that judges who are no longer active should resign from the Network to be replaced by sitting judges with authority and present experience in that area.
- 1.7 Designations should be made by way of a signed letter or the transmission of any official document from the competent authority responsible for the designation.

Permanent Bureau

secretariat@hcch.net



www.hcch.net