

**MEETING ON CROSS-BORDER COOPERATION IN
TRANSNATIONAL CHILD PROTECTION
RIGA 25-26 NOVEMBER**

**PANEL II: THE JUDGES AND THEIR
PERSPECTIVE ON ESTABLISHING
JURISDICTION, GATHERING AND VALIDATING
INFORMATION AND HEARING THE VIEWS OF
THE CHILD**

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APPOINTMENT TO IHNJ CONSTRAINED BY CERTAIN LIMITS IN SPANISH CASE :

- ✓ No intervention over the substance of the matter but over general points of law and case-law.
- ✓ Previous go-ahead if direct action is needed in a specific matter.
- ✓ Never a course / line of action can be imposed.
- ✓ Advise, assistance and cooperation with Spanish Central Authority where relies jurisdiction / competence in all aspects.

DIRECT JUDICIAL COMMUNICATIONS

Judges can consider the establishment of a direct judicial communications in a broad range of cases:

- ✓ To resolve *lis pendens* and related actions cases.
- ✓ To resolve cases involving concurrent proceedings at the same time in different jurisdictions.
- ✓ To avoid irreconcilable judgments given in different jurisdictions.

DIRECT JUDICIAL COMMUNICATIONS

Judges can consider the establishment of a direct judicial communications in a broad range of cases:

- ✓ To transfer a case to other court better placed to hear the case.
- ✓ To find out which is the competent court of other country when deciding a transferring jurisdiction case.
- ✓ To deal with child abduction and custody proceedings within EU Regulation n° 2201/2003 and Hague Convention 19 October 1996 scope, where direct judicial communications are regulated.

PROGRESSING IN THE FIELD OF DIRECT JUDICIAL COMMUNICATIONS I

- ✓ Spanish draft bill on international juridical cooperation in civil matters art. 4 devoted to DJC between jurisdictional bodies.
- ✓ Spanish jurisdictional bodies are authorized to establish DJC that must respect legislation in force in each State and that cannot affect or compromise independence of jurisdictional bodies involved.

PROGRESSING IN THE FIELD OF DIRECT JUDICIAL COMMUNICATIONS II

- ✓ CDCJ Council of Europe draft recommendation on preventing and resolving disputes on child relocation and their explanatory memorandum to be adopted in February 2015 by Committee of Ministers.

PROGRESSING IN THE FIELD OF DIRECT JUDICIAL COMMUNICATIONS III

DIRECT JUDICIAL COMMUNICATIONS BETWEEN JUDGES IN DIFFERENT JURISDICTIONS

Proposal for a CDCJ future activity

Concept Paper 2014

PROGRESSING IN THE FIELD OF DIRECT JUDICIAL COMMUNICATIONS IV

✓ CDCJ Council of Europe future work according 89th plenary meeting October 2014:

.....propose undertaking a comparative study on the practical solutions and best practice that have been adopted in member States with a view to resolving the problems faced by judges wishing to establish direct contact with a judge in another jurisdiction. It agreed that a consultant should be entrusted with the task.....

NATIONAL AND INTERNATIONAL NETWORKING

- ✓ A practical tool to promote a consistent interpretation of the convention.
- ✓ A time saving tool.
- ✓ Better use of resources available.

SPANISH EXAMPLES

REJUE, REDUE, RESEJ and PROSECUTORS NETWORK

NATIONAL AND INTERNATIONAL NETWORKING

✓ Networking and mediation: the LEPCA project (2014).

✓ The IHNJ

INTERNATIONAL NETWORKING EXPERIENCES:

EJN

- ✓ The EJN network art. 11 working group. information on national procedures: the method for processing and hearing incoming cases under the 1980 HC in conjunction with Regulation 2201/2003 and best practices and common minimum standards drawn from responses to the questionnaire circulated by the working group.
- ✓ The European Judicial Network working group on family mediation.

INTERNATIONAL NETWORKING EXPERIENCES:

IBER-RED (THE IBERO-AMERICAN NETWORK OF INTERNATIONAL LEGAL COOPERATION I

- ✓ An operational network of judges prosecutors, government officials and Central Authorities from all IberRed States plus to Supreme Court of Puerto Rico which endeavours to optimize international legal cooperation in criminal and civil cases.
- ✓ Aims to establish contact to other judicial cooperation networks.

INTERNATIONAL NETWORKING EXPERIENCES:

IBER-RED (THE IBERO-AMERICAN NETWORK OF INTERNATIONAL LEGAL COOPERATION I

- ✓ 22 Ibero-American countries.
- ✓ Working in the field of International child abduction.
- ✓ Memorandum of understanding with HC in 2013 to establish a framework for cooperation between parties.
- ✓ To appoint same liaison judges as possible concerning the IHNJ.

CHILD FRIENDLY JUSTICE FIELD

- ✓ FRA brochure explains child-friendly justice to children.
- ✓ The brochure explains key elements of child friendly-justice so that children may be made aware of and learn more about what child-friendly justice should mean for them

CHILD FRIENDLY JUSTICE FIELD I

- ✓ Children involvement in judicial proceedings (civil, criminal and administrative) European Commission.
- ✓ Study on children`s involvement in judicial proceedings aims collecting data and presentation on good practices on children`s involvement in judicial proceedings

CHILD FRIENDLY JUSTICE FIELD II

- ✓ Conference on the implementation of the Council of Europe Strategy for the Rights of the Child 2012-2015 entitled “Growing with Children’s Rights” (Dubrovnik, Croatia, 27-28 March 2014).
- ✓ CDCJ network on Child-friendly justice.
- ✓ CDCJ Website on the promotion of the Guidelines.
- ✓ Lanzarote Committee working at the moment in a child friendly justice version of the Lanzarote Convention.

CHILD PARTICIPATION FIELD AND OUTSTANDING CHALLENGES I

- ✓ Access to justice and provision of information to children in civil and administrative proceedings
- ✓ Training and specialization
- ✓ Multi-disciplinary approach
- ✓ Participation limited to consultation
- ✓ Lack of legal implementation
- ✓ Cultural barriers and resistance
- ✓ Addressing implications of childhood status (adult support is needed)

CHILD PARTICIPATION FIELD AND OUTSTANDING CHALLENGES II

- ✓ Reaching all children
- ✓ Ethic participation (quality, meaningful participation, bases for participation, inclusive, relevant, accountable, etc.)
- ✓ Lack of training and capacity
- ✓ Addressing power balances (danger to hear children only when they agree with us)
- ✓ Lack of tools for measuring progress in implementation.

NETWORKING AND MODERN TECHNOLOGIES

- ✓ Which email service is safest concerning the big three email providers: Yahoo, Hotmail, Gmail?
- ✓ Is security paramount for networking systems?
- ✓ What requirements do we need in terms of technology, security, reliability, etc.?
- ✓ Is current email system enough?
- ✓ What about malware distribution (key loggers and stealers to obtain personal information), phishing attack, spam attack, denial of service attack, and so on?
- ✓ Videoconferencing: IberRed example.

THE SO CALLED EU MEDIATION PARADOX

✓ Assessing the limited impact of the Mediation Directive and proposing measures to increase the number of mediations in the EU.

.....introducing a 'mitigated' form of mandatory mediation may be the only way to make mediation eventually happens in the EU.....

(Study requested by the European Parliament's Committee on Legal Affairs 2014).

THANK YOU EVER SO MUCH