

ADDRESS TO THE CDCJ – 60 ANNIVERSARY CELEBRATION

Professor emeritus Inge Lorange Backer, former chair of the CDCJ (2003-2005)

Ladies and gentlemen,

My personal memories of the CDCJ go back to the mid-seventies. The CDCJ, or the CCJ – le Comité pour la Coopération Juridique, as it was until it became a steering committee – would meet twice a year for a full week, usually in December and around midsummer. Most delegations would have two members. The Austrian Professor Löwe was in the chair, but the outstanding personality was the much respected delegate from the UK, Sir Vincent Evans, later to be elected judge of the European Court of Human Rights. The Palais de l'Europe was only a vision for the future, so the meeting was held in the old building now adjacent to the Palais. It had no air condition but all windows were open and jackets off in the hot afternoon of the early summer. On Thursday after lunch the Secretariat would be busy drafting the minutes of the meeting whilst the delegates, I presume, were off on an excursion arranged to the Alsatian countryside. Friday morning was spent meticulously examining in plenary the draft minutes. This could be a task for the heads of delegation, so as a junior member I was free to explore Strasbourg.

Family law was already an important part of the working plan of the CCJ even if there was no such item on the agenda of the meeting I attended. In the mid-seventies marriage was widely regarded as the cornerstone of family law which was intimately connected with the religious and moral values prevailing in the particular member state, even if the winds from Woodstock and the student rebellions of 1968 had now blown across Europe.

Regarding children, a basic distinction was made between children born in wedlock and out of wedlock. However, on the basis of work undertaken in the CCJ, a convention to provide for equal legal status between children born in and out of wedlock was adopted in 1975. It entered into force in 1978 and has been ratified by 23 states. The Convention dealt with paternal and maternal affiliation, recognition, denial and contesting of paternity, the assignment of parental responsibilities and children's succession rights. Even if the Convention allowed for a certain number of reservations and may now appear old-fashioned, it must be considered as a major contribution towards giving all children the same legal position irrespective of the marital status of their parents.

Over the years, there has been a shift of emphasis and outlook from family law to child law, in accordance with the winds of change. Altogether, there are at least six conventions and some 15 or 20 recommendations or resolutions, and more recently guidelines and white papers as well, that have been adopted at the instance of the CDCJ within this field. The instruments have aimed at encouraging and assisting member states in developing their domestic law and practice as well as providing solutions to transfrontier conflicts. A resolution from 1972 aimed at fixing the age of majority to 18 years. Some recommendations have served as a stepping stone for a future convention, others as a follow-up to a convention, and still others remained as soft law regarding specific issues, such as the 1998 recommendation on family mediation.

The first Council of Europe convention in the field was the 1967 Convention on the Adoption of Children. It obtained 18 ratifications, but was, after the turn of the century, denounced by three states, and a need for reform was generally felt. A revised convention saw the light of the day in 2008 and, for one thing, it allows for couples living in a stable relationship and for same-sex couples to be adopters. This Convention replaces the older convention for states who have ratified it and it has now 10 ratifications and 8 more signatures.

For international cooperation in child cases the detailed and complex rules of the 1980 Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children were a milestone which may still be important for access orders. This Convention – which is for short and somewhat misleadingly called the Custody Convention – is by far the most successful in terms of ratifications. For custody and residence orders, however, it has largely been overshadowed by the 1980 Hague Abduction Convention and the EU Brussels II regulation (and Brussels IIbis) but the fact remains that the efforts of the CDCJ were a spearhead in promoting effectively the rule of law where parents have a serious transfrontier conflict over their child.

In 1989, the UN Convention on the Rights of the Child (CRC) set a new way of thinking: Children are rightholders and not only offspring to be taken well care of. The CDCJ followed up first when preparing the 1996 Convention on the Exercise of Children's Rights. It supplements in family proceedings the right to be heard under the CRC while leaving it to the convention parties to determine to which particular proceedings it should apply. Thus, the Convention allows for a stepwise approach towards increasing and securing the procedural rights of children in family proceedings and ensuring that the views of the child are actually taken into account and given due weight by the authority deciding the case. Without becoming

a formal party, the child is given a role to be informed and to participate in matters which are of a vital importance to his or her circumstances of life.

This Convention –and article 12 of the CRC generally – is complemented by Guidelines on child-friendly justice adopted in 2010. These guidelines cover much more than family proceedings: They are standards of good practice in the administration of justice whenever children are affected – be it in civil, administrative or criminal matters – and they are in fact addressed to all authorities and actors involved in the administration of justice.

Words matter when it comes to influencing the way of thinking. «Parental rights» and «parental authority» have been replaced by «parental responsibilities» and «access» by the wider term «contact» which serves better to put the child at the centre. The 2003 Convention on Contact concerning Children aims at maintaining ties benefiting the child which are otherwise severed by a family conflict and lives up to the present-day world where contact can be upheld at a distance by modern technology as well as physically. With respect to transfrontier orders it provides for advance recognition which serves to speed up a possible future enforcement of the order. «Contact» as applied by the Convention includes the right to information about the child which may be important for maintaining a close relationship. The deliberations in the CDCJ and subsequent ratifications suggest, however, that the attitudes among member states may differ as regards the focus and priority on the child itself or on the larger family. An example is the Convention's requirement that states must allow for legal contact rights to be established for other than parents, for example for grandparents, siblings or even teachers having had a close bond with the child. Surely, this extension is a reason why some states have opted not to ratify the convention. But as time goes by, it may be that attitudes are converging at a European level.

Taken as a whole, I believe that the CDCJ has been successful in many ways in promoting a better and more just Europe for families and children. It has often been necessary to harmonise the efforts with other international instruments and with activities undertaken by other international organisations. And as developments in family and child law sometimes meet with traditional values in a member state, it happens that a stepwise but steady approach to the implementation of new standards is called for.

I congratulate the CDCJ on its 60th anniversary and on its accomplishments in family and child law and wish the CDCJ all luck in its future work.