

## **Celebration of the 60<sup>th</sup> Anniversary of CDCJ**

### **Adapting family law and the rights of the child to our modern societies**

Chair, colleagues,

It is a real pleasure, and honour, to be with you all today to celebrate the 60<sup>th</sup> anniversary of CDCJ. Many thanks for the invitation. CDCJ has been – and I am happy to say that it remains – a pivotal Steering Group within the complex committee architecture of the Council of Europe. Its work over the years commands respect, and justifiably so.

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CDCJ's achievements in the areas of civil and administrative law are substantial and many have been mentioned already so I will not repeat them. I want only to mention the recent Recommendations both on electronic evidence and online dispute resolution. I was very happy to be a member of the expert groups that prepared these instruments and their adoption by the Committee of Ministers was indeed timely. They provided important advice and guidance for our courts and court services during the unprecedented disruptions to judicial and administrative proceedings that resulted during protracted Covid-19 lockdowns.

I mention these Recommendations now for a specific reason. The task facing CDCJ in each case was to tackle some complex technical issues and to provide practical guidance for the responsible authorities in our States. Issues of ideology and principle did not arise and it was possible to proceed to the adoption of both instruments without controversy or polemical debate. We witnessed legal cooperation to meet new challenges at its best in both cases.

Let me say something now about family law and the rights of the child, and how best to adapt them to the needs of our modern societies. Unlike the technical issues that I have just mentioned, public and political discourse about the adaptation of family law and children's rights to meet present and future challenges is not without controversy and polemic. My impression is that the approaches taken in our States to matters such as, for example, parental responsibility – whether the parents are of the same sex or opposite sex, and are married or cohabiting – have become more diverse and divergent. For this reason, the draft text of the Recommendation on the best interests of the child in parental separation proceedings, which CDCJ will discuss later

in this meeting, makes it clear that the definitions of “parents” and “parental responsibility” in the text of the draft Recommendation refer to the respective definitions under national law.

In many other areas of family law and the rights of the child, as impassioned debates continue, legislative frameworks continue to lag, and the laws and policies on matters such as donor-assisted human reproduction and surrogacy form a patchwork quilt of legislative responses across our States. The prospect of consensual responses on such issues remains remote.

In the area of children’s rights there are, however, some reasons for hope. I want to underline the importance of non-governmental bodies and groups that advocate for the rights of children. In the CJ/ENF-ISE – the expert group preparing the draft Recommendations which reports to CDCJ on the rights of the child in cases of parental separation – we are fortunate to have representation from, and the active participation of, the Conference of INGOs of the Council of Europe. The activities of such bodies and groups play an important role in advocating for children’s rights not just at Council of Europe level but at national level. Their expertise, like that of the CRC, is an important resource.

I also want to mention the paramount role of the courts in giving real substance to the rights and best interests of children in their rulings. Considering the legislative lacunae that I mentioned earlier, this may require adoption of a more “purposeful” interpretation of legislation and international legal instruments than in the past. Balancing the rights of parents with the rights and best interests of their children when they separate remains a particular challenge for the courts.

As regards the future work of CDCJ, I look forward to the result of your ongoing consideration of the draft Recommendation on the rights and best interests of the child in parental separation cases. I am confident that you will identify further areas for cooperation in your future work programme. For example, areas such as the child’s right to identity and dignity have acquired new significance.

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Before I end this short intervention, I want to thank the many CDCJ colleagues with whom I worked over the 20 years of my CDCJ membership. I have always appreciated your wisdom and expertise. Permit me finally to express my sincere thanks to the many dedicated staff of the Secretariat with whom I came in contact over the years, and continue to meet in CJ/ENF-ISE. And I am not referring only to those who may sit at the top table but also to those who

prepare documents, make our arrangements for travel, and finalise the minutes of our meetings.  
And importantly, the interpreters.

Many thanks to all

Seamus CARROLL