CROSS-BORDER CHILD PROTECTION

THE INTERNATIONAL CO-OPERATION AMONG JUDGES. THE VALUE OF JUDGES’ NETWORKS AND DIRECT JUDICIAL COMMUNICATION

Geneva, October 2015
DIRECT JUDICIAL COMMUNICATIONS PLUS NATIONAL NETWORKING

Tools serving better cooperation and coordination to oil cross-border child protection systems

Practical tools to promote a consistent interpretation of international instruments

Time saving tools allowing better use of resources available to ensure adequate care

Active intermediation helping legal practitioners
DIRECT JUDICIAL COMMUNICATIONS

Judges can consider the establishment of direct judicial communications:

To tackle lis pendens and connected actions cases
To resolve cases involving concurrent proceedings at the same time in different jurisdictions
To prevent contradictory decisions made in different jurisdictions
DIRECT JUDICIAL COMMUNICATIONS

Judges can consider the establishment of direct judicial communications:

To assess best interest of children and right to be heard
To restore family links
To exchange information on child`s situation
To be keeping abreast of country of origin information.
DIRECT JUDICIAL COMMUNICATIONS

Judges can consider the establishment of direct judicial communications:

To transfer a case to other court better placed to hear the case

To find out / assess the competent court

To deal with child abduction and custody proceedings EU R. 2201/2003 and HC 1996
DIRECT JUDICIAL COMMUNICATIONS

Direct judicial communications can be useful to judges in order to:

- Gaps in legal instruments
- Mediation role. Compulsory?.
- In cross-border A.D.R.
- Coordination / Interaction to guardian, social workers, central authorities, welfare authorities involved
DIRECT JUDICIAL COMMUNICATIONS

Direct judicial communications can be useful to judges in order to:

Relocation orders / Arrangements / Contact provision orders: Should be able to be enforced abroad. To do it, judges probably need direct communication.

Parenting plans as a prevention?.
DIRECT JUDICIAL COMMUNICATIONS

Direct judicial communications can be useful to judges in order to:

Child’s views, right to information or counsel and representation and best interest in factors balancing

Gaps in good practices / protocols and coordination and factors to be taken into account and how
DIRECT JUDICIAL COMMUNICATIONS

Direct judicial communications can be useful to judges in order to:

Demand clear roles, responsibilities, exchange of information, how to assess situation and how better coordination other stakeholders to be achieved.
DIRECT JUDICIAL COMMUNICATIONS

Developing legal basis as a good practice:

Provide information on relevant policy solutions and best practices in the realm of DJC

• to improve national regulations when existing
• to implement when lacking a legal framework adequate to provide legal support to judges in different jurisdictions when supporting direct judicial communications.
DIRECT JUDICIAL COMMUNICATIONS

Hague Conference Leading Role

Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges.
DIRECT JUDICIAL COMMUNICATIONS

CDCJ Council of Europe future work 89th plenary meeting October 2014 go-ahead

Practical solutions adopted to solve or reduce problems that judges tackle when establishing direct judicial communications

A source of comparative information

To explore the practical mechanism for facilitating

Avoiding delays or lack awareness in this field
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Legal basis:

Far-off times: art. 2.4 New York 1956 Convention
Current real basis: Regulation 2201/2003, articles 11 (6) (7), 15 and 55 (c). HC 1996, articles 8, 9, 31
Relocation Recommendation Council of Europe 2015: Consideration should be given to DJC in international relocation cases
National domestic legislative basis for DJC
DIRECT JUDICIAL COMMUNICATIONS

Legal basis: Spanish new Law 29/2015, 30th July
Preamble II
Art. 4 authorizing Spanish jurisdictional bodies to establish DJC between jurisdictional bodies
Art. 12.2 to be used in requests over International Cooperation
Art. 35 and 36 to be used in requests on foreign law information and on Spanish law information
DIRECT JUDICIAL COMMUNICATIONS

Spanish new Law 29/2015, 30th July

Spanish jurisdictional bodies are authorized to establish DJC as a general rule

DJC have to respect legislation in force in each State (the rule of law), rights of parties (procedural safeguards) and cannot affect or compromise judicial independence
INTERNATIONAL NETWORKING

The EJN
(The EJN: art. 11 working group and EJN working group on family mediation).

THE IHNJ
IBER-RED
(The 22 Latin American Network of international cooperation, operational network of judges prosecutors, government officials and Central Authorities)
INTERNATIONAL NETWORKING

Networking and mediation: the LEPCA project or Lawyers in Europe focusing on Parental Child Abduction (2014)

Developing international networks ad hoc and useful for practitioners to develop specific interests
NATIONAL NETWORKING

Spanish examples: REJUE, REDUE, RESEJ and PROSECUTORS NETWORK

REJUE MEMBERS ROLE:

Link family judges, stakeholders and child protection services.
Support focal points of other networks.
Active intermediation.
NATIONAL NETWORKING

Spanish examples: REJUE, REDUE, RESEJ and PROSECUTORS NETWORK

REJUE MEMBERS ROLE:

Provide training services to others.
Gathering data.
Direct support to family judges face to face.
NATIONAL NETWORKING: MODERN TECHNOLOGIES

Which email service is safest: 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 phishing attack, spam attack, denial of service attack, an so on?

Videoconferencing: IberRed example
THANK YOU EVER SO MUCH

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