

International Association of Judges

47th Annual Meeting 2004 Mexico

2nd Study Commission

Questionnaire

The powers of a judge in family law cases

Since the field of family law is a very wide one it has been decided to restrict the topic to civil court proceedings concerning children, but excluding adoption of children.

(I)

1. In your legal system are civil cases concerning children heard in specialist family courts or by judges with special training in family law?
2. What orders may the court make concerning the welfare of children?
 - (a) Orders regulating with which parent (or other person) the child should live;
 - (b) Orders regulating the contact which the child should have with the parent with whom the child is not living;
 - (c) Orders relating to the payment by a parent of money for the maintenance of the child;
 - (d) Orders relating to such matters as the education, religious upbringing or medical treatment of the child;
 - (e) Orders relating to the administration of any property owned by the child;
 - (f) Orders depriving a person of his or her parental rights or responsibilities.

3. In deciding whether to make an order is the criterion which the court applies that of the best interests of the child?
4. To what extent may a judge dealing with a case involving children be more pro-active than in other cases?

In particular:-

- (a) May the judge make an order relating to the welfare of the child which has not been sought by either of the parents (or other parties in the case)?
- (b) May the court on its own initiative (*ex proprio motu*) cause investigations to be made into the circumstances of the child and the parents?
- (c) May the court call for expert reports by, for example, a child psychologist?
- (d) May the court require both parents to attend personally at any hearing?

Are there any other procedures for investigation or for case-management specially available to the judge dealing with a case involving children?

5. Is a family mediation service available in your country? If so, may the court refer the case to mediation, or is it obliged to do so?
6. Is a court hearing a case concerning a child obliged to give the child an opportunity to express his or her views? If so, does this depend on the maturity of the child? What methods are used in your legal system for ascertaining the views of the child?
7. By what means can a judicial decision regarding a child, in particular a decision about residence (custody) of the child or contact (access or visiting rights), be enforced in your legal system? May the court call for assistance from non-judicial bodies such as the police or social work authorities?

8. To what extent may the courts in your legal system enforce judicial decisions regarding children which have been pronounced in another country? Which international treaties or conventions apply, in your country, to the enforcement of foreign decisions or to the return of children wrongfully removed from a foreign jurisdiction into your country?
9. Are the powers available to a judge dealing with cases concerning children in your legal system satisfactory and do those powers allow the judge to be sufficiently pro-active? Are there any proposals for reform?

II

Which points would you like to discuss in detail?

III

(In order to frame the conclusions)

To what extent do you consider that a judge dealing with cases involving children should have a pro-active rôle? How should the exercise of that rôle be regulated?

IV

What topic do you suggest for next year?

Please send your response to the president of the commission at either

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