



Second Study Commission
Civil law and procedure

Meeting in Valle de Bravo, 31 October - 4 November 2004

Conclusions

THE POWERS OF THE JUDGE IN FAMILY MATTERS

The subject of the Second Study Commission at the annual meeting of 2004 was "The powers of the judge in family cases", the focus of the study being in civil cases involving children. The number of national reports received was 31, of which five arrived too late for inclusion in the General Report. The meeting of the Commission was attended by delegates from 29 countries.

Among the principal matters discussed in the Commission, were the following:

1. Views were expressed regarding specialisation. While it was noted that some countries had special family courts, it was generally recognised that it was difficult to provide such courts outside of larger centres of population. What was regarded as important by most delegates, was that a judge dealing with family cases, even as a generalist, should have access to training in family law and family relationships.
2. The need to obtain the views of the child and the methods of obtaining his views were also discussed. It was generally recognised that where a child expressed his views directly to a judge in confidence there was a conflict with the general principle that a judge should not decide a case on information not disclosed to the parties. Confidentiality might be necessary to enable the child to speak frankly. In practice, various ways of addressing the problem might be available, depending on the particular case.
3. The general view of delegates was that the courts had sufficient powers to be able to obtain information necessary to allow the judge to decide on the best interests of the child.
4. The problem sometimes encountered in practice of enforcing a court order for access in face of obstruction from the parent having custody was also discussed..

The delegates were content with the summaries and analyses contained in the General Report, which was adopted unanimously.

After the discussions the following conclusions were reached and adopted:

1. Irrespective whether the court is a special family court it is important that civil cases concerning children are decided by a judge with special training or experience in family law and family matters.
2. Where the judge obtains the views of the child in confidence, a conflict may rise between the desirability of maintaining confidentiality and the desirability of not deciding on information not known to the parties.

A judge should endeavour to address this conflict by means such as obtaining parties' agreement to the child views being kept confidential or by giving a brief summary, bearing in mind the rights of the child and his best interests.

3. The enforcement of orders affecting children should be carried out with sensitivity, bearing in mind the best interest of the child.

Subject for meeting in 2005:

Alternative Dispute Resolution as a means of improving the delivery of justice and reducing the delays in civil procedure

Valle de Bravo, November 3rd, 2004