

Fostering Co-operation through Hague Conventions

Regional Seminar for Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Moldova, Romania, Turkey, Ukraine, and Uzbekistan

Tbilisi, Georgia

26-28 February 2013

CONCLUSIONS AND RECOMMENDATIONS

From 26 to 28 February 2013, approximately 50 representatives from Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Moldova, Romania, Turkey, Ukraine, and Uzbekistan, as well as from the Court of the Eurasian Economic Community, met with experts from Germany and the Permanent Bureau of the Hague Conference on Private International Law (the Hague Conference) in Tbilisi for a Seminar jointly organised by the Hague Conference and the Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit (IRZ). The Seminar aimed to build on efforts, which began at a similar event held in Bonn, Germany, in October 2010, to foster greater knowledge of, and co-operation through, the Hague Conventions. This second Seminar also aimed to go into more detail concerning select Hague Conventions and to give participants an opportunity to share the progress made in their respective States since 2010. In addition, several new States were invited to join this second Seminar in order to further expand the reach of co-operation and networks and to maximise the benefit of the event.

The Seminar covered two main areas of private international law addressed by certain Hague Conventions, namely (i) child protection, family and property relations, and (ii) legal cooperation and litigation.¹

¹ The following Conventions were discussed: *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention); *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service Convention); *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Taking of Evidence Convention); *Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations* (Divorce Convention); *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (Child Abduction Convention); *Convention of 25 October 1980 on International Access to Justice* (Access to Justice Convention); *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Intercountry Adoption Convention); *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (Child Protection Convention); *Convention of 13 January 2000 on the International Protection of Adults* (Protection of Adults Convention); *Convention of 30 June 2005 on Choice of Court Agreements* (Choice of Court Convention); *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (Child Support Convention); and the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (Protocol to the Child Support Convention).

NOTING the diversity of legal traditions among participating States;

RECOGNISING that greater economic and social integration among participating States has led to an increase in cross-border transactions and cross-border movements of families and children in particular, as well as the resulting interactions between legal systems;

RECOGNISING that the Hague Conventions reinforce legal certainty and predictability, as well as the protection of individual rights and legitimate commercial interests;

RECOGNISING that five of the ten participating States are Members of the Hague Conference (Bulgaria, Georgia, Romania, Turkey and Ukraine) and all participants are from States connected to the Hague Conference either as a Member, as a Contracting State to one or more Hague Conventions, or both;

WELCOMING the fact that a number of participating States have become Contracting States to various Hague Conventions, in particular following the Bonn Seminar, or are in the process of finalising internal procedures to join some of the Conventions discussed;

RECOGNISING that work undertaken at this Seminar should continue in order to facilitate the cross border protection of children and families, to promote legal certainty and predictability in commercial and financial matters, and to facilitate and expedite judicial and administrative co-operation through the Hague Conventions;

ACKNOWLEDGING the great benefit of co-operation between the Hague Conference and IRZ in areas of common interest, as confirmed by the present Seminar;

RECOGNISING the valuable opportunity that the Seminar afforded participants to:

- a) gain a better understanding of the Hague Conventions and their relevance, implementation and practical operation in the participating States;
- b) appreciate how the Hague Conventions serve as a basis for furthering co-operation, communication and coordination between legal systems;
- c) understand the interactions between the Hague Conventions and the implementation of international human rights, as well as the promotion and facilitation of international trade and investment;
- d) exchange experiences and ideas with respect to the Hague Conventions and their relevance in the participating States; and

EXPRESSING the wish for similar seminars to be convened in the broad region of the participating States on a regular basis in the future and for additional targeted assistance regarding implementation and operation of the Hague Conventions to be available if needed and upon request;

THE PARTICIPANTS

In relation to the Seminar and the Hague Conference in general:

1. Resolved to share information obtained from the Tbilisi Seminar with the relevant authorities of the participating States, as well as regional and international organisations and professional associations;
2. Recommended that each participating State, where applicable, consider becoming a member of the Hague Conference, acknowledging that membership enables a State to take part in the decision-making process relating to the work programme of the Hague Conference and enhances the possibility of receiving technical assistance

- from the Permanent Bureau in relation to the implementation and practical operation of the Hague Conventions;
3. With respect to Conventions which participating States are not yet Party to, strongly encouraged each participating State to actively consider the merits and assess the means of joining the relevant Convention(s) by way of ratification or accession;
 4. Encouraged each participating State which is a Contracting State to a Hague Convention to promote that Convention among other States, and, where applicable, to co-operate with the Hague Conference in its periodic reviews of the Conventions' practical operation; and
 5. Encouraged participating Contracting States to any Hague Conventions to share their experience and harmonise the operation of these Conventions, with a view to further increasing their efficiency.

In relation to the Child Abduction Convention and Child Protection Convention:

6. Reaffirmed the relevance of these Conventions in the participating States and the importance of international co-operation for the protection of children moving across borders;
7. With respect to the Child Abduction Convention, emphasised the need for swift proceedings in order to meet the Convention's objectives and ensure the safe return of children;
8. With respect to the Child Protection Convention, acknowledged the complementary nature of this instrument to the Child Abduction Convention; and
9. Recognised the value of the Hague International Network of Judges in facilitating the practical operation of the Child Abduction Convention, and encouraged States which have not yet done so to designate members of the Network; participants also encouraged direct judicial communication among courts in participating States to the furthest possible extent.

In relation to the Intercountry Adoption Convention:

10. Recognised that for a better implementation of the principle of subsidiarity, Contracting States should strengthen their advocacy actions for the consolidation of their child protection systems in order to prevent family separation and, where separation occurs, to promote measures aimed at family reunification. If family reunification is not possible, participants encouraged solutions which ensure that children are cared for in a suitable permanent family environment in their country of origin, including domestic adoption;
11. Acknowledged that institutional care has a negative developmental effect on children and a permanent placement in an institution should, in most cases, be considered a measure of "last resort" for a child;
12. Recognised that States of origin should ensure the legal and psychosocial adoptability of a child on the basis of clear, defined and transparent criteria, as well as on the basis of the detailed information gathered on each child's specific situation, including his medical situation and that a decision on adoptability requires proper, accurate documentation on the child's background and origins;
13. Recommended that particular attention should be drawn to the cases of children with special needs, for whom intercountry adoption could be a solution, and noted that a specific selection and preparation of prospective adoptive parents, as well as a particular preparation of the child, is necessary for this type of adoption;
14. Recognised and supported the important work undertaken by the Expert Group of the Hague Conference on the Financial Aspects of Intercountry Adoption, and recommended that States take effective measures to ensure the transparency and the reasonableness of the costs linked with the adoption process in order to prevent and eliminate practices that may lead to abuses and improper financial gain; and

15. Reaffirmed Recommendation No. 18 of the 2005 Special Commission in that receiving States should "encourage compliance with post-adoption reporting requirements of States of origin" and "States of origin [are recommended] to limit the period in which they require post-adoption reporting in recognition of the mutual confidence which provides the framework for co-operation under the Convention".

In relation to the Child Support Convention and its Protocol on Applicable Law:

16. Recognised the importance of the Convention as the appropriate administrative and legal framework for the international recovery of child support and other forms of family maintenance; and
17. Acknowledged the role of the Convention in inviting reforms to existing systems for the recovery of child support and other forms of family maintenance.

In relation to the Divorce and the Protection of Adults Convention:

18. Recognised the benefits of both Conventions, particularly in the context of facilitating recognition of cross-border family relationships and familial obligations.

In relation to the Apostille Convention (including the e-APP):

19. Recognised that the Convention greatly facilitates the fast and efficient authentication of public documents emanating from one Contracting State to be produced in another Contracting State;
20. Recognised the role of the Convention in establishing a regulatory environment that is more conducive to cross-border trade and foreign direct investment, as highlighted by the World Bank and the International Chamber of Commerce;
21. Recognised the increasing acceptance and use of electronic Apostilles (e-Apostilles) and electronic registers of Apostilles (e-Registers) as part of the electronic Apostille Program (e-APP), and encouraged newly acceding States as well as other Contracting States to implement this program as a means to further enhance the secure and effective operation of the Convention; and
22. Encouraged participating States to review and use as guidance the Conclusions and Recommendations of the November 2012 Special Commission on the practical operation of the Apostille Convention, as well as the Handbook on the Practical Operation of the Convention endorsed by that meeting (both documents are available on the "Apostille Section" of the Hague Conference website).

In relation to the Service of Process Convention and Taking of Evidence Convention:

23. Noted that these Conventions greatly simplify and expedite the transmission of requests for service of process and taking of evidence abroad, and facilitate the prompt execution of those requests (incl. by allowing for the use of modern technologies);
24. Recognised that the designation of Central Authorities is critical to the smooth and effective operation of each Convention; and
25. Noted with interest the Hague Conference's plans to convene another meeting of the Special Commission on the practical operation of these two Conventions and interested States were invited to actively consider participation in that meeting.

In relation to the Access to Justice Convention:

26. Noted with interest the importance and broad application of the Convention to cross-border matters, including equal treatment of nationals and residents of

- Contracting States in respect of legal aid, security for costs, and the enforcement of cost orders; and
27. Invited the Hague Conference and its Permanent Bureau to further promote the Convention and provide additional tools and information to non-Contracting States in order to encourage wider ratification of and accession to the Convention, possibly also in languages other than English and French.

In relation to the Choice of Court Convention and ongoing work on the choice of law in international contracts and the recognition and enforcement of foreign judgments:

28. Acknowledged the benefits to cross-border business of respecting agreements to settle disputes, which arise from international commercial transactions, before the court chosen by the parties;
29. Acknowledged the importance of the Convention as an instrument to reinforce the international litigation system, in parallel to the international arbitration system, in particular the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*;
30. Acknowledged the importance of harmonised rules on the recognition and enforcement of foreign judgments, at the regional and global level;
31. Welcomed the decision to resume work at the Hague Conference towards common solutions on the recognition and enforcement of foreign judgments, and encouraged participating States to engage in this work to the furthest possible extent; and
32. Acknowledged the importance of party autonomy in commercial contracts, and recognised the importance of the Draft Hague Principles on the Choice of Law in International Contracts and encouraged the adoption of these and the further development of the Commentary.

The participants of the Tbilisi Seminar recognised the event's success and acknowledged the exceptional organisation of the Seminar by IRZ. They warmly thanked IRZ and the Permanent Bureau of the Hague Conference for their generosity and efficiency in staging this important event. The participants also thanked the administrative and support staff for their untiring work and invaluable contribution to the success of this Seminar.