

## Submissions by the Council of Europe in response to the Questionnaire

The draft Convention on contact concerning children is being prepared by the Committee of Experts on Family Law (CJ-FA) of the Council of Europe. The change in terminology (« access » to « contact ») strengthens the current notion that children are holders of certain rights. Copies in English or French of draft Convention may be obtained on request from [cj-fa@coe.int](mailto:cj-fa@coe.int) <<mailto:cj-fa@coe.int>>

The draft is expected to be finalised by the Committee of experts on family law (CJ-FA) at its next meeting (10 to 14 September 2001) and then considered by the European Committee on legal co-operation (CDCJ) and adopted by the Committee of Ministers in 2002.

In addition to the 41 member States of the Council certain other States may also participate in the preparation of this instrument (i.e. Canada, Japan, Holy See, United States of America, Mexico). The Hague Conference on Private International Law has also participated actively in this work.

It should be noted in particular that the future Convention will :

- a. provide the possibility for non-member States of the Council to become Parties (Articles 23 and 24);
- b. not prejudice the application of other international instruments in this field (in particular the various Hague Conventions which are specifically listed in the text and the European Convention on the recognition and enforcement of decisions concerning custody of children and on restoration of custody of children- Article 21)
- c. support the operation of these international instruments by promoting the adoption in States of similar principles concerning contact and by providing for the return of the child after contact (paragraph 9 of the draft explanatory report) ;
- d. provide new elements which can help to prevent or limit conflicts which may appear in cases of contact in particular as the provisions of existing Conventions are insufficient, have a limited scope of application or do not contain principles or standards which can be applied in a uniform manner by States in contact cases (paragraph 10 of the draft explanatory report).

The objects of the draft Convention (Article 1) are :

- a. to determine general principles to be applied when making or amending contact orders ;
- b. to fix, in particular in cases of transfrontier contact, appropriate safeguards and guarantees to ensure the proper exercise of such contact and the immediate return of the child at the end of the period of contact ;
- c. to establish co-operation between central authorities, judicial authorities and other bodies in order to promote and improve contact between a child and his or her parents and other persons having family ties with children.

The general principles to be applied when making or amending contact orders will not only help the judicial authorities, at a national level, to follow certain standards but will ensure that any foreign decisions to be enforced come from legal systems with similar reliable standards. However these principles are not to be used to justify the examination of the merits of a foreign decision. In case of doubt the party concerned should appeal against the decision in the State where it was made (paragraphs 16 and 17 of the

draft explanatory report).

The draft Convention deals with questions such as:

- a. objects and definitions (Articles 1 and 2) ;
- b. application of principles (Article 3) ;
- c. contact between a child and his or her parents or persons other than parents (Articles 4 and 5) ;
- d. the right of a child to be informed and to express his or her views (Article 6) ;
- e. resolving disputes (article 7) ;
- f. contact agreements (Article 8) ;
- g. amendment, suspension or revocation of a contact order (Article 9) ;
- h. safeguards and guarantees to be taken concerning contact (Article 10) ;
- i. emergency measures (Article 11) ;
- j. measures to promote and improve transfrontier contact (Articles 12 to 19).

The above matters are particularly relevant to questions 1 (7) and 4 of the questionnaire.