

# ACTIVITIES OF THE COUNCIL OF EUROPE IN THE FIELD OF FAMILY LAW

MARTA REQUENA\*

## I. INTRODUCTION

The Council of Europe (Council) is an international political organization, founded on May 5, 1949, by ten European States in order to promote unity between its members.<sup>1</sup> The Council now consists of forty-three Member States encompassing most of Greater Europe.<sup>2</sup> Canada, Japan, the United States, Mexico, and other States and entities have special observer status with the Council of Europe and participate in many of the Council's activities.<sup>3</sup>

The Council's main aims are to reinforce democracy, human rights, the rule of law, and to develop common responses to the political, social, cultural, and legal challenges that face Member States.<sup>4</sup> The Council's achievements over the years have been notable. For example, the work of the Council has led to the adoption of over 175 European conventions and agreements that create the basis for a "common legal space" in Europe.<sup>5</sup> Beginning in 1989, the Council has integrated most of the countries of Central and Eastern Europe into its structure. The Council has supported these States in their efforts to implement

---

\* Head of the Nationality and Family Law Unit, Private Law Department, Directorate General I-Legal Affairs, Council of Europe. The views expressed in this paper are solely those of the author and do not necessarily reflect those of the Council of Europe.

1. See Council of Europe, *A Short History*, (last visited Jan. 12, 2001) <<http://www.coe.int>>; Council of Europe, *Statute of the Council of Europe*, May 5, 1949, 87 U.N.T.S. 103 (last visited Jan. 12, 2001) <<http://conventions.coe.int/treaty/EN/cadreprojets.htm>>.

2. See Council of Europe, *CoE Map & Members* (last visited Feb. 12, 2001) <<http://www.coe.int>>. The following States are members of the Council of Europe: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former "Yugoslav Republic of Macedonia," Turkey, Ukraine and the United Kingdom. See *id.*

3. See *id.*

4. See Council of Europe, *Directorate General I Legal Affairs Treaty Office*, (last visited Jan. 12, 2001) <<http://conventions.coe.int>> [hereinafter *Council Treaty Office*].

5. See *id.*

and consolidate political, legal, and administrative reforms. The Council's continued support to these States increasingly has become dependent on compliance with the commitments these States have made to the Council.

Before outlining the major trends of the Council's activities in the field of family law, it is important to recognize the contribution of the Council in transforming the legal structures of a significant number of post-communist European States. The Council's contribution to this transformation is significant because it has benefited democratic security in Europe. The Council began to assist the countries of Central and Eastern Europe in their democratic reform in 1990 by drawing on its own experience and entering into cooperative legal and human rights programs with these countries.<sup>6</sup> The goals of these programs are to support ongoing legislative reforms, to extend and consolidate the democratic reform process, and to facilitate the gradual and harmonious integration of these countries into the European edifice. Through the framework of these programs, the Council has assisted these countries in drafting their most important legislation, including civil and criminal procedure codes.<sup>7</sup> In addition, the Council has organized training seminars for judges, prosecutors, lawyers, notaries, and other needed professionals. Moreover, the Council of Europe is providing legal expertise and assisting in the drafting of a new family code in the Republic of Albania.<sup>8</sup>

The Council's activities during the last twenty years in the area of legal protection of the family have been particularly important. The Council has worked to harmonize policies and has encouraged Member States to adopt common family law standards and programs. Although the task is difficult, given the varied legal systems and traditions of Member States, the Council understands that the adoption of similar standards in certain areas of family law is of considerable importance to Member States and many families.<sup>9</sup>

A number of international instruments have been prepared by Member States.<sup>10</sup> These instruments, conventions and recommendations, either aim to further law reform in individual States or to promote the harmonization of the laws by providing a framework for cooperation between States to improve the legal protection of the family, particularly that of children.<sup>11</sup>

---

6. See DIRECTORATE GENERAL OF LEGAL AFFAIRS, BUILDING TOGETHER EUROPE BASED ON THE RULE OF LAW (2001) (On file with the Council of Europe, Directorate General of Legal Affairs, Strasbourg, France).

7. See *id.*

8. See *id.*

9. See MARIE-THÉRÈSE MEULDERS-KLEIN, DROIT COMPARÉ DES PERSONNES ET DE LA FAMILLE 351 (Bruylant, Bruxelles 1998).

10. See *Council Treaty Office*, *supra* note 4. These instruments include: European Convention on the Adoption of Children, European Convention on the Legal Status of Children Born Out of Wedlock, European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, and European Convention on the Exercise of Children's Rights. The text of these treaties can be viewed at the Council's Treaty Office website. See *id.*

11. See *id.*

A number of the international instruments prepared by the Council deal only with matters relating to children.<sup>12</sup> Other instruments deal with child custody issues, children born out of wedlock, adoption, and the exercise of children's rights,<sup>13</sup> while some instruments deal with other matters as well as children's issues.<sup>14</sup>

Many of these international instruments are being prepared or have been prepared as a result of proposals made by the Parliamentary Assembly of the Council of Europe.<sup>15</sup> The *European Convention on the Exercise of Children's Rights* was prepared following the adoption by the Parliamentary Assembly, in 1990, of *Recommendation 1121 on the Rights of Children*.<sup>16</sup> During the preparation of international instruments, the Council of Europe always considers protection of the family a priority, particularly the interests of children. When drafting conventions, recommendations, and other official documents, the Council has endeavored to use suitable expressions for this purpose. For instance, the Council replaced the notion of "parental authority" with the term "parental responsibilities." Similarly, the Council uses the words "children born out of wedlock," rather than "illegitimate children," and child "contact" rather than child "access."

The Council usually prepares one of two types of international legal instruments: recommendations or conventions. Recommendations contain guidelines that are addressed to governments. Conventions contain obligations that are binding on contracting States. The Council's Committee of Ministers adopts these instruments after the designated groups address the relevant underlying issues. For instance, the Committee of Experts on Family Law (CJ-FA) is the group that prepares the majority of the work concerning the legal protection of the family. Other groups, such as the Convention Committee on the Custody Convention (T-CC) and the Committee of Experts on Nationality (CJ-NA) also deal with questions concerning the legal protection of children.

The Conference of European Ministers of Justice and the European Conference on Family Law are other bodies within the Council of Europe that are concerned with the law as it relates to the family and children. Over the last three decades, the European Ministers of Justice have examined a number of family law and child rights issues, including the legal representation and custody of children,<sup>17</sup> the harmonization and reform of family law,<sup>18</sup> the acquisition

---

12. *See id.*

13. *See generally Council Treaty Office, supra note 4.*

14. *See id.* Treaties such as European Convention on Human Rights, European Social Charter, Convention on Human Rights and Biomedicine, and European Convention on Nationality. *See id.*

15. *See* Parliamentary Assembly of the Council of Europe, *Parliamentary Assembly*, (last visited Jan. 12, 2001) <[http://stars.coe.fr/index\\_e.htm](http://stars.coe.fr/index_e.htm)>.

16. *See* Council of Europe, *European Convention on the Exercise of Children's Rights*, Europ. T.S. No. 160 (last visited Jan. 12, 2001) <<http://conventions.coe.int/treaty/EN/treaties/html/160.htm>> [hereinafter *Children's Rights Convention*].

17. *See* Basle Conference, Resolution No. 1-7 (1972).

18. *See* Brussels Conference, Resolution No. 1-10 (1976).

of the surname,<sup>19</sup> the supremacy of the interests of the child in the field of private law,<sup>20</sup> and issues concerning sexual exploitation, pornography, prostitution, and trafficking in children and young women.<sup>21</sup>

To date, five European conferences on family law have taken place. The first European Conference on Family Law occurred in Vienna in 1977. The Vienna conference was devoted to four topics: measures to integrate children into a new family; duties of parents towards their children; powers of spouses over common property and property rights of the surviving spouse; and the grounds and consequences of divorce. The second Conference on Family Law was held in Budapest in 1992. The conference in Budapest examined a number of family law issues; namely, the work of the Ombudsman and other similar bodies to protect children and promote their rights, parental separation and remarriage, the attribution of parental responsibilities, legal provisions to prevent and reduce disputes in divorce cases, and alternative methods of solving family disputes. The third European Conference on Family Law, held in Cadiz in 1995, dealt with future family law issues. The 1995 conference focused particularly on family law reform as it relates to children and incapable adults. The fourth European Conference on Family Law, at Strasbourg in 1998, was devoted to the "family mediation in Europe" theme. The family mediation theme was broken down into eight topics.<sup>22</sup> These topics included the introduction of family mediation in Europe; the special characteristics and advantages of mediation; family mediation in practice; the preparation for and the process of family mediation in the context of *Recommendation No. R (98) 1* on family mediation;<sup>23</sup> the selection, training and qualification of mediators; the relationship between family mediation and legal proceedings; the status of mediated agreements and their implementation; trans-frontier family mediation; and promotion of, and access to, family mediation.<sup>24</sup> The fifth European Conference on Family Law at The Hague in 1999 was devoted to the civil law aspects of emerging forms of registered partnerships. More specifically, the Hague Conference dealt with legally regulated forms of non-marital cohabitation and registered partnerships. Additionally, the Council has held colloquies on European law since 1969, some of which were devoted to family law.<sup>25</sup>

19. See Athens Conference, Resolution No. 2-13 (1982).

20. See Lisbon Conference, Resolution No. 2-16 (1988).

21. See *id.*

22. See FAMILY MEDIATION IN EUROPE, PROCEEDINGS OF THE 4<sup>TH</sup> EUROPEAN CONFERENCE ON FAMILY LAW (1998). Available from Council of Europe publishing (last visited Feb. 12, 2001) <<http://book.coe.int>>.

23. See Council of Europe, *Family Mediation-Recommendation No. R (98) 1 and Explanatory Memorandum*, (last visited Feb. 12, 2001) <<http://book.coe.int/gb/cat/liv/html/11422.htm>> [hereinafter *Recommendation No. R (98) 1*].

24. See FAMILY MEDIATION IN EUROPE, *supra* note 22.

25. The Colloquies include the IV Colloquy on European Law: Legal Representation and Custody of Minors (Vienna 1974); the XI Colloquy on European Law: Legal Problems Concerning Unmarried Couples (Messina 1981); The XXIII Colloquy on European Law: Transsexualism, Medicine and Law (Amsterdam 1993). The last Colloquy was the XXVII Colloquy on European Law Concerning Legal Problems Relating to Parentage. This colloquy took

Given the above overview of the activities of the Council of Europe in the field of family law, the following will examine in detail some of the most recent instruments adopted in this field, followed by a discussion of some of the Council's current and future activities.

## II. RECENT INTERNATIONAL LEGAL INSTRUMENTS ADOPTED IN THE FIELD OF FAMILY LAW

### A. *The European Convention on the Exercise of Children's Rights*

The *European Convention on the Exercise of Children's Rights*<sup>26</sup> (Children's Rights Convention) was opened for signature on January 25, 1996, and entered into force on July 1, 2000.<sup>27</sup> The object of the Children's Rights Convention is to promote children's rights, to grant them procedural rights, and to facilitate the exercise of these rights by ensuring that children are informed and allowed to participate in judicial proceedings either themselves or through other persons or representative bodies.<sup>28</sup> The Children's Rights Convention requires States to declare specifically the categories of family cases to which the Convention is to apply.<sup>29</sup> States must choose at least three categories from among several including custody, residence, access, questions of parentage, adoption and administration of property, in their declaration.<sup>30</sup> The Children's Rights Convention lists some of the procedural rights<sup>31</sup> and procedural measures that judicial authorities and representatives must utilize to ensure the exercise of children's rights.<sup>32</sup> The Children's Rights Convention also sets up a standing committee composed of representatives from the States who are parties to the Convention.<sup>33</sup> The standing committee will evaluate the application of the Children's Rights Convention and will propose measures that are considered likely

---

place in Malta on September 15-17, 1997. Four topics covered during the XXVII Colloquy included: (1) parentage and human rights; (2) parentage and bioethics; (3) parentage and civil status matters; and (4) establishment and consequences of maternal and paternal affiliation. See LEGAL PROBLEMS RELATING TO PARENTAGE, PROCEEDINGS OF XXVIIITH COLLOQUY ON EUROPEAN LAW (Malta 1997). Available at *Council of Europe Publishing*, (last visited Feb. 12, 2001.) <<http://book.coe.int>>.

26. See *Children's Rights Convention*, *supra* note 16.

27. European Convention on the Exercise of Children's Rights has been ratified by Greece, Poland and Slovenia. This Convention has also been signed by the following States: Austria, Croatia, Czech Republic, Finland, France, Germany, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, Slovakia, Spain, Sweden, Turkey and Ukraine. See Council of Europe, *Chart of Signatures and Ratifications, European Convention on the Exercise of Children's Rights*, (last visited Feb. 12, 2001) <<http://www.conventions.coe.int/treaty>>.

28. See *Children's Rights Convention*, *supra* note 16, preamble.

29. See *id.* art. 1.

30. See *id.* arts. 3-5.

31. These rights include the child's right to be informed, to express an opinion in proceedings, and to apply for the appointment of a special representative. See *id.*

32. See *id.* arts. 6-8.

33. See *id.* art. 16.

to improve its operation.<sup>34</sup> This European legal instrument provides assistance to the Member States who are required to implement the *United Nations Convention on the Rights of the Child*.<sup>35</sup>

### B. Family Mediation Recommendation No. R (98) 1

The Committee of Ministers of the Council of Europe adopted *Recommendation No. R (98) 1 of the Committee of Ministers to Member States on Family Mediation* in January of 1998.<sup>36</sup> With regard to this Recommendation, it is important to highlight that in family matters, the use of mediation and other dispute resolution processes as alternatives to judicial or administrative determinations is relatively new to the Member States of the Council. Furthermore, prior to this international agreement, there were no international legal instruments that established directions or principles concerning family mediation among Member States. *Recommendation No. R (98) 1* acts as a guiding principle that fills in the gaps among the Member States by establishing a common basis to implement and regulate this alternative dispute resolution process.

Research suggests that family mediation is more appropriate than more formal legal mechanisms for the settlement of sensitive, emotional issues surrounding family matters. Furthermore, mediated agreements are a vital component in making and maintaining cooperative relationships between divorcing parents because the mediation process reduces conflict and thus facilitates contact between children and both parents. Therefore, *Recommendation No. (98) 1*, coupled with the conclusions and proceedings of the fourth European Conference on Family Law,<sup>37</sup> provide Member States with workable guidelines for establishing and administering family mediation systems.

---

34. *See id.*

35. United Nations Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 9, at 166, U.N. Doc. A/44/49 (1989), 28 I.L.M. 1448 (1989). The Member States who are bound by the United Nations Convention are required by Article 4 to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. *See id.* art. 4. The European Convention on the Exercise of Children's Rights furthers this objective. *See Council Treaty Office, supra* note 4.

36. *See Recommendation No. R (98) 1, supra* note 23.

37. The fourth conference was held at Strasbourg in 1988 and focused on family mediation in Europe as mentioned above. *See FAMILY MEDIATION IN EUROPE, supra* note 22.

*C. Recommendation No. R (99) 4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults*<sup>38</sup>

The third European Conference on Family Law focused on “family law in the future” and addressed, in particular, the question of protecting incapable adults.<sup>39</sup> The reports and discussions from the conference clearly show that the issue of incapacitated adults is likely to be a very relevant topic in the years to come. There are many reasons for the increased interest in this group of adults such as demographic changes, medical developments, social changes and increased interest in the protection of human rights. The conference organizers asked the Council to invite a group of specialists to examine the possibility and desirability of drafting an international instrument that would protect this potentially vulnerable group. The appropriate instrument would protect incapable adults by guaranteeing their integrity, rights, and, wherever possible, their independence. Following this proposal, the Committee of Ministers of the Council of Europe set up the Group of Specialists on Incapable Adults (CJ-S-MI) in 1995. The CJ-S-MI group prepared *Recommendation No. R (99) 4*.<sup>40</sup> Part I of the *Recommendation* defined incapable adults as:

adults who, by reason of an impairment or insufficiency of their personal faculties, are incapable of making, in an autonomous way, decisions concerning any or all of their personal or economic affairs, or understanding, expressing or acting upon such decisions, and who consequently cannot protect their interests. . . . The incapacity may be due to a mental disability, a disease or a similar reason.

“The principles [of the *Recommendation*] apply to measures of protection or other legal arrangements enabling such adults to benefit from representation or assistance in relation to those affairs.”<sup>42</sup> The *Recommendation* also lists a certain number of governing principles that relate to this field.<sup>43</sup> The *Recommendation* includes some procedural principles,<sup>44</sup> some principles concerning the role of representatives<sup>45</sup> and regulations that control interventions by health care

---

38. See Council of Europe, Committee of Ministers, *Principles Concerning the Legal Protection of Incapable Adults Recommendation No. (99) 4*, adopted Feb. 23, 1999, (last visited Jan. 12, 2001) <<http://www.cm.coe.int/ta/rec/1999/99r4.htm>> [hereinafter *Recommendation No. R (99) 4*].

39. See *id.*

40. See *id.*

41. *Id.*

42. *Id.*

43. See *id.* pt. II. These principles are respect for human rights, flexibility in legal response, maximum preservation of capacity, publicity, necessity, proportionality, procedural fairness and efficiency, paramountcy of interests and welfare of the person concerned, respect for wishes and feelings of the person concerned, and consultation.

44. See *id.* pt. III.

45. See *id.* pt. IV.

providers.<sup>46</sup> The broad coverage of this Recommendation provides adequate protection for this vulnerable group.

*D. Recommendation No. R (99) 7 of the Committee of Ministers to Member States on the Application of the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children*<sup>47</sup>

*Recommendation No. R (99) 7* is important because it encourages Member States to sign and ratify the *European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children* without delay, if they have not already done so. Furthermore, the *Recommendation* asks those Member States to sign the Convention without any reservations and “to make, whenever possible, the decision concerning recognition and enforcement [of child custody or restoration decisions issued by courts in other jurisdictions] within a period of six weeks from the date of commencement of the proceedings before the judicial authority; and ensure that all costs, in particular costs of appeals, be borne by the state addressed.”<sup>48</sup>

## II. CURRENT ACTIVITIES IN THE FIELD OF FAMILY LAW

The Committee of Experts on Family Law (CJ-FA) operates under authority of the European Committee on Legal Cooperation (CDCJ). The CJ-FA has been in charge of the intergovernmental activities in the field of the legal protection of the family since 1981. The CJ-FA’s efforts have focused particularly on child protection. The CJ-FA is composed of family law specialists from the forty-three Member States. States that have recognized observer status with the Council may also send representatives to CJ-FA meetings. The following bodies also have observer status with the CJ-FA: The Hague Conference on Private International Law, International Commission on Civil Status (CIEC), International Social Service, and International Institute for the Unification of Private Law (UNIDROIT).

The CJ-FA has the task of strengthening the legal protection of children and promoting common legal standards in the field of family law throughout Europe. To accomplish this, the CJ-FA considers its own terms of reference as well as the *Final Declaration and Action Plan of the Second Summit of the Heads of State and Governments of the Member States of the Council of*

---

46. See *id.* pt. V.

47. See Council of Europe, Committee of Ministers, *Recommendation No. R (99) 7 To Member States on the Application of the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children*, (last visited Jan. 12, 2001) <<http://cm.coe.int/ta/rec/1999/99r7.htm>> [hereinafter *Recommendation No. R (99) 7*].

48. *Id.*



*Europe.*<sup>49</sup> Currently, the CJ-FA is working on issues relating to the rights of children to have contact with their parents and others who have sufficient family ties to the them, as well as questions concerning parentage.<sup>50</sup>

#### A. *The Draft Convention on Contact Concerning Children*<sup>51</sup>

During the third European Conference on Family Law that focused on “family law in the future,” it was noted that with the continuing internationalization of family relationships within a more unified Europe, the question of trans-frontier access to children was becoming more and more topical. It was further noted that the Council should consider taking additional steps to improve matters relating to child access. The Council was receptive and decided that what was needed was an international agreement regarding trans-frontier access to children and safeguards for the return of children after access was accomplished. Shortly after the conference, the CJ-FA was instructed to consider developing a means of securing the right of children to maintain personal relations and direct contact with both parents on a regular basis, as well as the means of improving the machinery for international cooperation in cases of custody and trans-frontier access. To achieve this objective, the CJ-FA set up the Working Party on Custody and Access (CJ-FA-GT1) in 1996. The CJ-FA-GT1 prepared the Draft Convention on Contact Concerning Children (Contact Convention) and its explanatory report.<sup>52</sup> The Committee of Ministers of the Council of Europe will likely adopt the Contact Convention in late 2001.

The Contact Convention has three objectives. The first objective is to determine the general principles that apply when contact orders or agreements are made or amended.<sup>53</sup> The second objective is to establish appropriate safeguards and guarantees, particularly in cases of trans-frontier contact,<sup>54</sup> that will ensure the proper exercise of child contact and the immediate return of children at the conclusion of the contact period. The third objective is to establish cooperation between central authorities, judicial authorities and other organizations that will promote and improve contact between children, parents, and others who have family ties to a child and are entitled to child contact.

---

49. The summit was held in Strasbourg, October 10-11, 1997. See Council of Europe, *Appendix 6, Revised Terms of Reference of the Committee of Experts on Family Law (CJ-FA)*, (last visited Jan. 12, 2001) <<http://www.cm.coe.int/dec/1999/660/x6.htm>>.

50. See *id.*

51. The latest version of the Draft Convention on Contact Concerning Children as well as its explanatory report are included in the document CJ-FA-GT1 (2000) RAP11. This document is available upon request from the Documentation Center of the Department of Private Law (EURODOC), e-mail: [cjfa@coe.int](mailto:cjfa@coe.int).

52. See *id.*

53. These principles include the right of contact between a child and parent, the right of a child to be informed, and the right to express his or her views.

54. These safeguards include the surrender of passports or identity documents, financial guarantees, charges on property, and other undertakings or stipulations required by the court.

The CJ-FA considered the possibility that many custodial parents might be reluctant to allow any national or trans-frontier contact to take place for fear, sometimes with reason, that a child might not be returned. The drafters of the Contact Convention also considered the possibility that non-custodial parents or other relatives entitled to child contact may disregard custody decisions and keep children after contact visits in situations where there is limited child contact. Hence, the Contact Convention drafters recognized that an improved system, with established guidelines for national and trans-frontier child contact, would improve regular child contact, thereby reducing the total number of national and trans-frontier problems relating to custody and contact. The Contact Convention encourages States to adopt similar provisions in their national legislation to standardize the process on domestic levels, thereby facilitating international cooperation.

The change of the terminology from access to contact in the Contact Convention strengthens the modern notion that children are holders of certain rights. It seems more appropriate to refer to child contact with specific persons rather than simply the rights of certain persons to gain access to children. The notion of access belongs to an era when laws referred to parental authority or even paternal authority rather than parental responsibility. Another supplementary reason for the change in terminology is the frequent use of the "right [of both parents and children] to maintain contact" in the case law interpreting Article 8 of the *European Convention on Human Rights and Fundamental Freedoms*.<sup>55</sup> For these reasons, the text of the Contact Convention uses the term "contact" rather than "access" for those situations where the child has contact with a person with whom he or she does not usually live.

When considering the relationship between the Contact Convention and the existing international legal instruments that contain provisions on matters governed by the Contact Convention, it is necessary to emphasize that, apart from certain child access provisions in the *European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children*,<sup>56</sup> the Contact Convention does not affect any other international instruments. Second, it should be remembered that the child access and contact provisions of the existing conventions inadequately address the relevant issues. Furthermore, it must be remembered that even the most recently prepared conventions that relate to this area of family law have either a limited scope or do not contain general principles or standards that can be applied uniformly by Member States in contact cases. The Contact Conven-

---

55. For instance, the European Court of Human Rights declared a violation of Article 8 of the European Convention on Human Rights due to restrictions imposed on contact between the applicants and their children in a number of cases. See *Olsson v. Sweden*, (No. 1) 130 Eur. Ct. H.R. (ser. A) (1988); *Eriksson v. Sweden*, 156 Eur. Ct. H.R. (ser. A) (1989); *Margareta and Roger Anderson v. Sweden*, 226 Eur. Ct. H.R. (ser. A) (1992); *Olsson v. Sweden*, (No. 2) 250 Eur. Ct. H.R. (ser. A) (1992).

56. See *European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children*, arts. 8 & 11. Available at *Council Treaty Office, supra* note 4.

tion contains the widely accepted general principles of good practice currently applied by most Member States when making or amending contact orders. These principles can be applied in all types of cases, whether or not there is an international aspect to them. Moreover, these principles can be relied on by individuals when making private child contact agreements, or in the context of family mediation. Therefore, the Contact Convention provides a new international foundation that can help to prevent or limit possible conflicts in cases of child contact by dealing generally with procedural matters and substantive principles.

When despite the provisions of the Contact Convention, the child is not returned after contact that has taken place abroad, the Contact Convention essentially leaves it to the other applicable conventions to address the return of the child to the place of habitual residence. By providing a clearer framework for the exercise of contact, the Contact Convention likely will simplify the tasks of courts when requested to order the return of the child under the other applicable conventions.

### *B. Draft Report on Principles Concerning the Establishment and the Legal Consequences of Parentage*<sup>57</sup>

As mentioned earlier, the Council of Europe, in cooperation with the Faculty of Law and the Foundation for International Studies at the University of Malta, organized the XXVII Colloquy on European Law.<sup>58</sup> This family law conference was held in Malta in 1997 and focused on the theme legal problems relating to parentage.<sup>59</sup> The experts in attendance identified a number of the significant parental issues of European family law. These issues were placed into four categories. Specifically, Professor Tonio Mallia, the colloquy's general reporter, stated in his conclusions that all the different subjects examined during the colloquy could be tackled under four particular headings:

- a) Who in law are the parents of the child?
- b) How is maternity and paternity to be proven?
- c) The effects of parentage—whether all parents should have parental responsibility, and whether such responsibility should be assigned to non-parents?
- d) What should be included in parental responsibility?<sup>60</sup>

These categories were discussed in light of the variable interests involved: those of the children, those of the parents, and those of the state.<sup>61</sup> The experts

---

57. The latest version of the Draft Report on Principles Concerning the Establishment and the Legal Consequences of Parentage is included in the document CJ-FA-GT2 (2000) RAP7. This document is available upon request from the Documentation Center of the Department of Private Law (EURODOC), e-mail: [cjfa@coe.int](mailto:cjfa@coe.int).

58. See LEGAL PROBLEMS RELATING TO PARENTAGE, *supra* note 25.

59. See *id.*

60. T. Mallia, *Conclusions of the XXVIIth Colloquy on European Law*, in LEGAL PROBLEMS RELATING TO PARENTAGE, *supra* note 25, at 131-32.

at the colloquy identified a need to strike a balance between biological truth and emotionally related truth when these interests are considered during efforts to set forth relevant guidelines.<sup>62</sup>

This colloquy provided essential information for the CJ-FA, which currently is involved in preparing a set of principles concerning the establishment and legal consequences of parentage. The CJ-FA is scheduled to adopt a draft report in 2001 that will include many of the principles identified at the colloquy. Although more may be included, the CJ-FA's draft report on parentage issues includes guiding principles in the following areas: (1) the establishment of maternal affiliation; (2) the establishment of parental affiliation by presumption in case of married and unmarried couples; (3) the establishment of parental affiliation by means of voluntary recognition and by means of a judicial decision; (4) the establishment of parental affiliation by medically assisted procreation; (5) the main legal consequences of parentage, in particular questions relating to parental responsibilities, maintenance, family name of the child, nationality of the child, succession and the right of a child to know his or her origins; (6) the possible legal consequences where parentage has not been established;<sup>63</sup> and; (7) proposed guidelines for situations where parental status is challenged or changed.<sup>64</sup>

Some or all of these principles could be used by national legislatures as possible models when elaborating or revising their national laws concerning these parental issues; therefore, these principles could be considered as guidelines to improve the legal status of children.

### C. *Future Activities in the Field of Family Law*

Finally, the planned future activities of the Council of Europe in the field of family law should be briefly outlined. The sixth European Conference on Family Law is scheduled for 2002. The Council of Europe has decided to focus the sixth Family Law Conference on the topic of legal protection of the family in the field of succession. The decision to focus on the succession topic was based on the importance of providing legal protection to surviving children, spouses, and other family members in succession situations. The Council took into account the disparity among the different European legislations and the problems that arise because of their disparities. The sixth conference will likely

---

61. *See id.*

62. *See id.*

63. There are certain cases when it is known that a person is the parent of the child but the law does not allow the parentage to be established. For instance, in some countries, the father of a child born as a result of an incestuous relationship is not entitled to establish his paternity. In some cases, there may still be certain legal consequences, the incestuous father may have to pay maintenance and the child may be entitled to parental contact.

64. The paternal and maternal affiliation may be contested in proceedings under the control of the competent authority. The parentage can be changed following an adoption.

be followed immediately by a CJ-FA meeting, which should examine the results of the conference and make any necessary follow-up proposals.

During its meeting in May, 2000, the CJ-FA considered the possibility of holding a family law conference focusing on trans-frontier conflicts between parents regarding their children. The main objectives of the proposed conference will be to examine, in detail, problems with child custody and contact in the trans-frontier context. The proposed conference will consider methods of improving cooperation between central authorities and also examine problems of procedure and legal cooperation. The proposed conference on trans-frontier conflicts also will be a key opportunity to distribute widely the various existing international legal instruments on this subject. The proposed conference probably will take place after the adoption of the *Convention on Contact Concerning Children*. Therefore, the conference will provide a useful platform to spread information about the new Council of Europe Convention.

In summary, it must be emphasized that through the preparation of numerous international legal instruments, through its programs and projects addressing the interests of children, and through the organization of meetings and conferences where the most controversial family law issues are debated, the Council of Europe has contributed to strengthening the legal protection of the family, particularly that of children in Europe.

