

4^{ème} Commission

Droits de l'homme et droit international privé

Human Rights and Private International Law

Rapporteur : Fausto Pocar

Travaux précédents : Annuaire 2016, vol. 77, 391
Annuaire 2017, vol. 78, 215
Annuaire 2018, vol. 79, 1
Annuaire 2019, vol. 80, 147

La commission est composée de M. Andreas Bucher, Diego Fernández Arroyo, Mme Hélène Gaudemet-Tallon, MM. Paul Lagarde, Ahmed Mahiou, Ali Mezghani, Sir Peter North, MM. Linos-Alexandre Sicilianos, Symeon C. Symeonides, Hans van Loon.

Draft Resolution Explanatory Report (27 January 2021)

Introduction.

1. At the 2019 Hague Session of the Institute, following the proposal submitted by the Rapporteur of the 4th Commission, Mr Jürgen Basedow, a Draft Resolution was discussed by the Plenary, which however could not reach an agreement on a text. At this point a motion was voted whereby the Institute decided to postpone the consideration of a Resolution to the next session. After the Hague session, however, Mr Basedow resigned as Rapporteur, and some members of the Commission also expressed their intention to leave the Commission. Therefore, the Bureau of the Institute, at its meeting held at The Hague on 19 February 2020, taking note of these events: a) appointed new members to the Commission to replace the members that had decided to leave it, so that the Commission is now composed as follows: Messrs Andreas Bucher, Diego Fernández Arroyo, Mrs Héléne Gaudemet-Tallon, Messrs Paul Lagarde, Ahmed Mahiou, Ali Mezghani, Sir Peter North, Messrs Fausto Pocar, Linos-Alexandre Sicilianos, Symeon Symeonides, Hans van Loon; b) decided to appoint Mr Fausto Pocar as Rapporteur of the 4th Commission with the specific mandate to prepare a Draft Resolution in light of the preparatory works and the plenary discussions that were held at The Hague. It thanked the previous rapporteur Mr Basedow, for his work.

2. Following the specific mandate received by the Bureau, the new Rapporteur has prepared a new Draft Resolution based on the preparatory documents, including the Report of Mr Basedow, the previous draft resolutions, the written proposals of amendments submitted at The Hague that could not be discussed, and the plenary discussions as they result from the minutes of the Hague session.¹ He tried to take into account all the views expressed with the aim of establishing a text which could reflect an

¹ For all these previous documents see *Annuaire*, 2016, vol. 77, 391 ss.; 2017, vol. 78, 215 ss.; 2018, vol. 79, 1 ss.; 2019, vol. 80, 147 ss.

acceptable compromise. To this effect, he also redrafted some articles and made new proposals, where appropriate in square brackets.

3. The Rapporteur intended to convene a meeting of the 4th Commission to discuss the text of this new Draft Resolution. As this opportunity was not available because of the well-known restrictions to holding meetings face to face, reserving to convene if appropriate a virtual meeting of the Commission, the Rapporteur circulated, on 24 August 2020, the new text among the members of the Commission in order to collect their comments, proposals and suggestions in writing. Subsequently, new versions of the Draft Resolution were circulated, and commented upon by members of the Commission, on 20 October 2020 and on 15 December 2020. Following the last comments received at the beginning of January 2021, the Rapporteur drafted the present text of the Draft Resolution dated 27 January 2021.

4. In submitting this Draft Resolution for consideration by the Plenary of the Institute, the Rapporteur wishes to acknowledge the outstanding contribution given by Mr Basedow to the work of the Institute on this topic with his excellent and comprehensive Report – which remains the source on which the present Draft Resolution is based – and his guidance during the previous discussions in the 4th Commission and in the Plenary. The Rapporteur also wishes to express his deep gratitude to the members of the Commission who cooperated with him in the elaboration of the Draft Resolution with their precious and well-focused comments during the last months.

General considerations.

5. The elaboration of the present Draft Resolution has been inspired by several guidelines that deserve to be shortly recalled before introducing some brief comments on specific issues or provisions.

6. The general approach has been, as mentioned earlier, not to elaborate a completely new draft, but rather to start from the situation as resulted from the discussions that took place at the 2019 Hague session of the Institute. Those discussions had led to some modifications of the Draft Resolution submitted at the opening of the session, which reflected views emerged in the Plenary. It appeared therefore advisable to take the last version submitted by Mr Basedow² as the starting point for a new draft, which would reconsider that version of the Draft Resolution in light of the issues not already settled during the session and the written proposals which had not yet been

² See *Annuaire*, 2019, vol. 80, 181 ss.

discussed. It goes without saying that new proposals were also taken into account which emerged during the Commission's work.

7. This approach allowed elaborating a text which tried to meet the concerns, or at least some of the concerns, expressed by members during previous discussions and facilitate future deliberations of the Institute at its next session by avoiding, as much as possible, unnecessary repetitions of past debates.

8. A general issue that attracted some criticism at the Hague session was that the Draft Resolution under discussion did not capture sufficiently the relationship between private international law and the public international law dimension of human rights protection, sometimes indulging in technical descriptions of private international law issues that had no or a too limited human rights component. Additionally, it was observed that the consideration of human rights in that Draft Resolution might appear to the reader exceedingly influenced by western values rather than focused on a global vision which would better suit an Institute's Resolution.

9. Without necessarily agreeing with such criticism, the present Draft Resolution refers to human rights, as enshrined in the UN Universal Declaration and the International Covenants, which constitute the UN International Bill of Human Rights generally accepted by all States, and tries to avoid legal technicalities that may be typical of private international law to and rather focus on principles and rights that must be generally observed, including in particular the fundamental principle of non-discrimination and the rights of access to justice and to a fair hearing, as well as on the protection of weaker and vulnerable persons.

10. In any event, the guiding principle followed in drafting the articles of the present Draft Resolution consisted of ensuring that each provision should have both a private international law and a human rights component, the purpose of the exercise being not to restate private international law or human rights principles and rules, but rather to establish an appropriate relationship and balance between the two legal areas in cross-border relations.

11. It is also worth noting that on several occasions the Draft Resolution, especially in procedural matters, insists on international cooperation or refers to existing international instruments – in particular to existing Hague conventions – rather than proposing a new specific provision, when it appears that such instruments offer an appropriate respect for human rights.

In this connection, it may be recalled that a reference to international conventions in lieu of an independent drafted provision does not represent a new approach. It has been followed in other resolutions of the Institute, in particular recently in the Resolution adopted at the Hague session on the Internet and the Infringement of Privacy.³

12. Following the application of these guidelines the text of the Draft Resolution has been largely modified with respect to the last version discussed at the Hague session. The present text is also shorter and the language more concise, a factor that also induced to delete the subdivision of the present Draft Resolution in chapters, some of which would have only comprised one or two articles.

Specific issues.

13. Although it seems unnecessary to comment upon all the provisions of the Draft Resolution, many of which do not require any specific clarification, some of them raise issues that deserve to be selected for a specific short comment, especially in light of the discussions which took place at the Hague session.

14. A lively debate concerned a proposed article on the definition of “human rights holders”, in particular with respect to the inclusion of legal persons and entities alongside physical persons. Whether legal persons can also hold human rights is a disputed issue and there is no agreement on it in legal doctrine and practice. A compromise was suggested at the Hague session, whereby an article would read as follows: “For the purposes of this Resolution, natural persons including groups of persons and, under certain circumstances, legal persons are considered to be holders of human rights”. However, although a compromise of this kind deserves attention and appreciation, retaining it would not only reopen a difficult debate, but also add little to the present Draft Resolution. A definition of human rights already exists in article 1, which refers to the rights protected by international law and by international human rights instruments. Consequently, should international customary or conventional law recognize human rights of legal persons, these persons would also be human rights holders for the purposes of the present Resolution. Thus, a specific provision on this matter would perhaps clarify an issue in human rights law but appears unnecessary in the context of a resolution concerning the relationship between human rights and

³ See *Annuaire*, 2019, vol. 80, 145.

private international law. Therefore, the above-mentioned compromise text has not been inserted in the Draft Resolution, leaving it to the plenary to raise the issue again should a clarification of this kind be considered appropriate or useful.

15. The general obligation to observe human rights in the field of private international law is contained in one cardinal provision, article 2, which sets forth the entities, domestic and international, which have to respect and ensure human rights in cross-border relations between private individuals. A specific reference to arbitral tribunals has been included in paragraph 1 rather than in a specific provision concerning arbitration. Paragraphs 2 and 3 recall general principles to be observed in order to fully take into account human rights in conformity with international law standards. Except for the reference in paragraph 2, no rule on interpretation has been retained. After careful consideration, it appeared that a reference in this regard to universality and to uniform interpretation of international human rights standards might not be in consonance with all current approaches in international practice. Moreover, on one hand a reference to universality is already made in the first preambular recital and principles of interpretation taking into account plurality of cultures are expressed in the last paragraph of the preamble; on the other hand, a provision generally reminding that international human rights instruments should be interpreted according to articles 31 to 33 of the Vienna Convention on the Law of Treaties would find no appropriate place in an Institute's resolution.

16. The proposed provisions on jurisdiction and procedure do not require a specific comment at this stage. The accent has been put on the requirements of substantive connections, on the respect for human rights as concerns access to justice, including by countering denial of justice, as well as on avoiding discrimination prohibited under international law and ensuring the right to a fair hearing.

17. A similar approach is followed with respect to the general provisions on the determination of the applicable law, where a reference to the principle of non-discrimination is critical in shaping connecting factors to determine the applicable law and as far as the assessment of public policy and the application of mandatory norms are concerned.

18. The question of the inclusion of a provision on "party autonomy" has been discussed, with this possible wording: "In determining the applicable law States should ensure that party autonomy is respected provided that it does not prejudice the interests of third parties, or imperative norms, and

article 2 is observed". On one hand its inclusion could be justified by building on a preambular paragraph of the Resolution on party autonomy adopted at the Basel session, which recognized that party autonomy is one of the fundamental principles of private international law and is enshrined as a freedom of the individual in several United Nations conventions and resolutions.⁴ On the other hand the existence of a solid legal basis to characterize it as a human right for the purposes of the present Resolution might be disputable. The consideration that party autonomy has been sometimes regarded as a general principle of law within the meaning of article 38 of the Statute of the International Court of Justice,⁵ does not imply in itself that it can also qualify as a human right. In light of the above, the Rapporteur has decided not to include party autonomy in the Draft Resolution, leaving it to the plenary to raise the issue if there is the feeling that a specific provision on party autonomy would be desirable.

19. The provisions on legal capacity, personal status and name of a person have been reconsidered and simplified in order to avoid their too technical content, though keeping their basic elements implying their recognition in a different country. A specific article has been added concerning the registration of a person immediately after birth and the release of appropriate personal identity documentation portable across borders.

20. A similar approach characterizes the articles on family relations. Here too the draft has been simplified and, where appropriate, the principle of the best interests of the child has been taken into account. Some provisions echo or refer to existing international instruments, in particular Hague conventions, recommending States to adhere to them to regulate cross-border situations, as in the case of international child abduction and of the protection of persons in vulnerable situations, or to extend the substance of the provisions of such international instruments to cases concerning relations with, or between, non-contracting States, as in the case of intercountry adoption. An analysis of these existing international instruments shows indeed that all of them draw inspiration from the need for ensuring the

⁴ See *Annuaire*, 1992, vol. 64-I, 383, and Basedow Report, in *Annuaire*, 2016, vol. 77, 429.

⁵ See in this sense especially E. Hambro, "The Relations between International Law and Conflict Law", 105 *Hague Collected Courses* 49 (1962-I); see however for a different view R. Ago, "Règles générales des conflits de lois", 58 *Hague Collected Courses* 285 (1936-IV); H. Batiffol - P. Lagarde, *Droit international privé*, 8th ed., 41 (1993); F. Pocar, "Public International Law Solutions for Conflict of Laws Problems", 1 *ItalianYbIL* 183 (1975).

protection of certain categories of persons, in particular children, and are in consonance with international human rights standards.

21. A new provision has been inserted in the Draft Resolution – article 19 – relating to corporate social responsibility, with a view to drawing the attention of States and international organizations on their obligation to promote such responsibility as far as cross-border relations are concerned, since it might significantly impact on the respect for human rights in such relations.

22. Finally, the last article of the Draft Resolution insists on the respect for the right to a fair hearing concerning the recognition and enforcement of foreign judgments, stressing that such a right has to be observed not only in the procedure aimed at the recognition but also as regards the stage of enforcement of a foreign judgment. Here too a recommendation is made to the States' obligation to promote accession to existing international instruments or the conclusion of new agreements in civil and commercial matters.

DRAFT RESOLUTION (27 January 2021)
Human Rights and Private International Law

The Institute of International Law,

Recalling the universal character of human rights and their worldwide recognition notably in many international global and regional instruments,

Recalling the Institute's 1989 Santiago de Compostela Resolution stating that human rights are a direct expression of the dignity of the human person,

Considering that the effective reach of human rights depends on implementing mechanisms, which differ from each other in the instruments mentioned above and their Contracting States, as well as in the domestic legal systems of States,

Considering that the Charter of the United Nations requires the UN as well as all its Member States to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,

Considering that this obligation is not limited to the domestic sphere but also extends to cross-border relations,

Recalling that cross-border private and commercial relations are regulated, if not by international conventions of uniform law, by international or domestic rules governing conflict of jurisdiction and conflict of laws,

Convinced that private international law can inspire and guide the implementation and interpretation of human rights, notably by ensuring respect for the plurality of traditions, cultures and legal systems,

Adopts the following Resolution:

Article 1

Definition

For the purposes of this Resolution, the term "human rights" refers to all rights and freedoms, including those set forth in the Universal Declaration of Human Rights and the International Covenants of 1966, which are protected by international law and by international human rights instruments.

Article 2

Principles

- (1) States and their legislative bodies, executive authorities and the judiciary, as well as international organizations, international courts and tribunals, including arbitral tribunals, and other legal entities shall respect and ensure human rights in cross-border relations between private individuals.
- (2) Human rights shall be respected and ensured at the stage of development, interpretation and application of private international law rules affecting the said rights.
- (3) Only derogations from and restrictions of human rights that are compatible with international law and with international human rights instruments binding on the forum State shall be permitted.

Article 3

Jurisdiction

- (1) Heads of jurisdiction in international cases shall be established according to substantial connections of, or the parties to, the dispute, taking into consideration the parties' human right of access to a court and avoiding any form of discrimination prohibited under international law.
- (2) The immunity of States should not deprive the victims of human rights violations in cross-border relations of their right to reparation.

Article 4

Forum necessitatis

If the rules of jurisdiction may lead to a denial of justice in a given case, the right of access to a court exceptionally requires that a court declares itself competent, if there is no closer link with a foreign State where access to justice would be available.

Article 5

Dispute settlement clauses

- (1) Any contractual clause granting exclusive jurisdiction to a court or an arbitral tribunal is incompatible with the right of access to a court if that attribution leads to a denial of justice.
- (2) Any contractual clause that allows one of the parties, particularly by way of a unilateral option, to occasion such a denial of justice is incompatible with the right to a fair hearing.

Article 6

Fair hearing

(1) The national rules of civil or commercial procedure as applied to cross-border relations must take into account the interests of legal protection of all parties and be consistent with their right to a fair hearing.

(2) In the interest of effective legal protection of parties, States should promote international judicial cooperation. In implementing this cooperation, the requesting State and the requested State must respect the right of private parties to a fair hearing, especially by completing the request within a reasonable time.

Article 7

Connecting factors

Connecting factors used to determine the applicable law must avoid any form of discrimination prohibited by international law and by international human rights instruments binding on the forum State.

Article 8

Imperative norms

In assessing whether foreign law designated by the rules on conflict of laws complies with international public policy and in applying overriding mandatory laws due consideration shall be given, in accordance with Article 2, to human rights, notably the principle of non-discrimination.

Article 9

Legal capacity

(1) Every person has the capacity to acquire and hold rights and assume obligations, according to the modalities as determined by the applicable law, and in cross-border relations is entitled to appear before the competent courts to enforce his or her rights and defend him- or herself.

(2) Where a person, due to age, maturity or disability is unable to appear in person, or unable to enforce his or her rights or assume obligations without assistance, before the court, the State shall provide appropriate arrangements to ensure that his or her views can be heard and given due weight.

Article 10

Personal status

Respect for the human rights to family life and to private life requires the recognition of personal status established in a foreign State in accordance with the law of that State, provided that the person concerned had a significant

connection with that State and such recognition does not result in a manifest violation of the international public policy of the State where recognition is sought.

Article 11

A person's name

(1) A person's name forms part of his or her identity which is protected by the right to private life, irrespective of the rules on conflict of laws in a given State.

(2) A person's name registered with a State according to the applicable domestic law must be recognized in another State without regard to its conflict of laws rules unless that name is manifestly incompatible with the international public policy of that other State, taking into account Article 8.

Article 12

Registration and documentation of identity

Every person has the right to be registered immediately after birth, and to have his or her identity, including name and date of birth, recorded in a document accessible to the public and portable across borders.

Article 13

Marriage

(1) Child marriage and marriage agreed upon in the absence of the free and full consent of the two spouses infringe upon human rights and shall not be recognized.

(2) In interpreting and applying the forum's imperative norms which oppose the recognition of a marriage celebrated in a foreign country under paragraph 1, the court shall take into account all the circumstances of the case, with a view to avoiding any undesirable impact on the rights of the child or of the forced victim, as well as on third parties that were not involved in the forced nature of the marriage.

Article 14

Parentage

Respect for the human rights to family life and to private life requires that a parentage relationship established in a State be recognized in other States, taking into account the best interests of the child, which should prevail over considerations of international public policy of the State where recognition is sought.

Article 15

Adoption

Recognizing that the 1993 Hague Convention on protection of children and co-operation in respect of intercountry adoption is based on universally accepted principles and notably on the best interests of the child, its provisions should, in essence, be applied to all intercountry adoptions, including in relations with, or between, non-contracting States.

Article 16

Protection of persons in vulnerable situations

- (1) States shall protect all persons who, in cross-border relations, find themselves in vulnerable situations.
- (2) Such protection includes the recovery of child support from the parents or other persons having financial responsibility for the child and, if need be, from the State of its habitual residence.
- (3) In order to give effect to the above paragraphs, States shall promote accession to existing instruments and the conclusion of international instruments, notably of private international law.

Article 17

International child abduction

- (1) States shall take measures to prevent illegal cross-border child abduction and non-return of children and shall promote, to this end, accession to existing instruments or the conclusion of multilateral or bilateral agreements.
- (2) In applying these instruments or their domestic law provisions, the authorities seized with return applications shall act with urgency in view of obtaining the return of the child to the State of origin, considering the best interests of the child both in deciding on the return and in taking appropriate measures for its safety.

Article 18

Protection of property

- (1) States shall respect private property and other proprietary rights encumbering a corporeal asset acquired in a foreign State in accordance with its laws.
- (2) Where a change of the applicable law resulting from private international law is conducive to the loss of such right, the forum State shall grant the holder an equivalent right to the extent possible.

Article 19

Corporate social responsibility

States and international organizations shall promote corporate social responsibility with respect to human rights in cross-border relations, taking into account basic standards of social and environmental protection.

Article 20

Recognition and enforcement of foreign judgments

- (1) The right to a fair hearing encompasses effective legal protection including with respect to the recognition as well as to the enforcement of foreign judgments.
- (2) A foreign judgment shall not be recognized or enforced against a party's will if the proceeding in the foreign court violated that party's right to a fair hearing.
- (3) States shall promote accession to existing international instruments or the conclusion of agreements on the recognition and enforcement of foreign judgments in civil and commercial matters.

PROJET DE RÉSOLUTION (25 Février 2021)
Droits de l'homme et droit international privé

L'Institut de Droit international,

Rappelant le caractère universel des droits de l'homme et leur reconnaissance mondiale, notamment dans de nombreux instruments internationaux à l'échelle globale et régionale,

Rappelant la Résolution adoptée par l'Institut en 1989 à Saint-Jacques-de-Compostelle qui déclare que les droits de l'homme sont une expression directe de la dignité de la personne humaine,

Considérant que la portée effective des droits de l'homme dépend des mécanismes de mise en œuvre qui diffèrent dans les instruments mentionnés et leurs États contractants ainsi que dans les ordres juridiques internes des États,

Considérant que la Charte des Nations Unies demande aux Nations Unies ainsi qu'à tous ses États membres de promouvoir le respect universel et effectif des droits de l'homme et des libertés fondamentales pour tous, sans distinction de race, de sexe, de langue ou de religion,

Considérant que cette obligation n'est pas limitée aux espaces internes et s'étend également aux relations transfrontières,

Rappelant que les relations privées et commerciales transfrontières sont réglées, sinon par des conventions internationales de droit uniforme, par des règles internationales ou nationales de conflit de juridictions et de conflit de lois,

Convaincu que le droit international privé peut inspirer et guider la mise en œuvre et l'interprétation des droits de l'homme, notamment en assurant le respect de la pluralité des traditions, cultures et systèmes de droits,

Adopte la présente résolution :

Article 1

Définition

Sont considérés comme des droits de l'homme aux fins de la présente résolution, tous les droits et libertés, y compris ceux qui sont reflétés dans la Déclaration universelle des droits de l'homme et dans les Pactes

internationaux de 1966, qui sont protégés par le droit international et par des instruments internationaux de droits de l'homme.

Article 2

Principes

1. Les États par l'intermédiaire de leurs organes législatifs, exécutifs et judiciaires, ainsi que les organisations internationales, les cours et les tribunaux internationaux, y compris les tribunaux arbitraux, et toute autre entité juridique doivent respecter et garantir les droits de l'homme dans les relations transfrontières entre personnes privées.
2. Les droits de l'homme doivent être respectés et garantis au stade du développement, de l'interprétation et de l'application des règles de droit international privé ayant une incidence sur ces droits.
3. Des dérogations et des restrictions aux droits de l'homme ne sont permises que si elles sont conformes au droit international et aux instruments internationaux de droits de l'homme liant l'État du for.

Article 3

Compétence judiciaire internationale

1. Les critères de compétence judiciaire internationale doivent se fonder sur des rattachements substantiels au litige ou aux parties de celui-ci, en tenant compte du droit fondamental des parties à l'accès à justice et en évitant toute discrimination interdite par le droit international.
2. L'immunité des États ne devrait pas priver les victimes de violations des droits de l'homme dans les relations transfrontières de leur droit à une réparation.

Article 4

Forum necessitatis

Lorsque les règles de compétence internationale sont susceptibles d'aboutir, dans un cas donné, à un déni de justice, il résulte du droit d'accès à la justice qu'exceptionnellement un tribunal doit se déclarer compétent si le litige ne présente pas un lien suffisant avec un autre État ou l'accès à la justice serait disponible.

Article 5

Clauses de résolution de litiges

1. Est incompatible avec le droit d'accès à la justice toute clause contractuelle qui attribue compétence exclusive aux tribunaux d'un État ou à un tribunal arbitral si cette attribution aboutit à un déni de justice.

2. Est incompatible avec le droit à un procès équitable toute clause contractuelle qui ne permet qu'à l'une des parties, notamment par une option unilatérale, de provoquer un tel déni de justice.

Article 6

Procès équitable

1. L'application des règles nationales de procédure civile et commerciale aux litiges transfrontières doit tenir compte des intérêts de toutes les parties à une protection juridique et elle doit respecter leur droit à un procès équitable.

2. Dans l'intérêt de l'efficacité de la protection juridique, les États devraient promouvoir la coopération judiciaire internationale. Dans la mise en œuvre de cette coopération l'État requérant et l'État requis doivent respecter le droit des parties privées à un procès équitable, notamment en répondant à la requête dans un délai raisonnable.

Article 7

Rattachements

Les critères de rattachement utilisés pour le choix de la loi applicable doivent éviter toute discrimination interdite par le droit international et par les instruments internationaux sur les droits de l'homme liant l'État du for.

Article 8

Normes impératives

En appréciant la compatibilité de la loi désignée par les règles de conflit avec l'ordre public international et en appliquant les lois d'application immédiate on tient compte, dans le respect de l'article 2, des droits de l'homme, notamment du principe de non-discrimination.

Article 9

Capacité juridique

1. Toute personne a la capacité d'acquiescer et d'être titulaire de droits et d'obligations, selon les modalités déterminées par la loi applicable, et elle a le droit, dans les relations transfrontières, de se présenter devant les tribunaux compétents pour y faire valoir ses droits et assurer sa défense.

2. Lorsqu'une personne à cause de son âge, de sa maturité ou de son incapacité n'est pas en mesure d'ester personnellement en justice, ou de faire valoir ses droits ou d'assumer des obligations sans assistance devant un tribunal, l'État doit mettre en place les mesures appropriées pour assurer que son avis soit entendu et reçu avec le poids qui convient.

Article 10

Statut personnel

Le respect du droit à la vie familiale et à la vie privée exige la reconnaissance d'un statut personnel établi dans un État étranger selon le droit de cet État, à la condition que la personne concernée ait eu un lien suffisant avec cet État, et qu'il n'y ait pas de violation manifeste de l'ordre public international de l'État requis.

Article 11

Nom d'une personne

1. Le nom d'une personne fait partie de son identité qui est protégée par le droit à la vie privée, sans égard aux règles de conflit de lois d'un État déterminé.

2. Le nom d'une personne enregistré dans un État en vertu de la loi applicable de cet État doit être reconnu dans un autre État sans égard à ses règles de conflits de lois, à moins que le nom ne soit manifestement incompatible avec l'ordre public international de cet autre État, dans le respect de l'article 8.

Article 12

Enregistrement et documents d'identité

Toute personne a le droit d'être enregistrée immédiatement après sa naissance et d'avoir son identité, y compris son nom et sa date de naissance, inscrite dans un document accessible au public et pouvant circuler à travers les frontières.

Article 13

Mariage

1. Un mariage concernant un enfant ainsi qu'un mariage contracté en l'absence du libre et plein consentement des deux époux est une violation des droits de l'homme et ne sera pas reconnu.

2. En interprétant et en faisant valoir les normes impératives du for s'opposant à la reconnaissance d'un mariage célébré à l'étranger en vertu de l'alinéa 1^{er}, le juge tient compte de toutes les circonstances de l'espèce, afin d'éviter toute conséquence négative pour les droits de l'enfant ou de la victime forcée, ainsi que pour les tiers qui n'étaient pas impliqués dans la nature forcée du mariage.

Article 14

Filiation

Le respect du droit à la vie familiale et à la vie privée exige qu'un rapport de filiation établi dans un État soit reconnu dans d'autres États, compte tenu de l'intérêt supérieur de l'enfant qui devrait l'emporter sur des considérations d'ordre public international de l'État requis.

Article 15

Adoption

Reconnaissant que la Convention de La Haye de 1993 sur la protection des enfants et la coopération en matière d'adoption internationale est fondée sur des principes acceptés de manière universelle et notamment sur l'intérêt supérieur de l'enfant, ses dispositions devraient s'appliquer à toutes les adoptions internationales, y compris dans les relations avec, ou entre, des États non-contractants.

Article 16

Protection des personnes en situation de vulnérabilité

1. Les États doivent assurer la protection de toute personne qui se trouve, dans les relations transfrontières, en situation de vulnérabilité.
2. Cette protection inclut le recouvrement par les enfants des aliments auprès de leurs parents et d'autres personnes ayant une responsabilité financière à leur égard, et le cas échéant auprès de l'État de la résidence habituelle de l'enfant.
3. Afin de donner effet aux alinéas précédents, les États favorisent l'adhésion à des instruments existants et la conclusion d'accords internationaux, notamment de droit international privé.

Article 17

Enlèvement international d'enfants

1. Les États doivent prendre des mesures pour lutter contre les déplacements et les non-retours illicites d'enfants à l'étranger et doivent favoriser, à cette fin, l'adhésion à des instruments existants ou la conclusion d'accords multilatéraux ou bilatéraux.
2. En appliquant ces instruments ou leurs dispositions nationales, les autorités saisies de demandes de retour doivent procéder d'urgence en vue du retour de l'enfant, en tenant compte de l'intérêt supérieur de l'enfant et en prenant les mesures appropriées pour sa sécurité.

Article 18

Protection de la propriété

1. Les États doivent respecter la propriété privée et les autres droits dérivés du droit de la propriété portant sur des biens corporels acquis dans un État étranger en conformité avec la loi de celui-ci.
2. Lorsqu'un conflit mobile survenu en vertu du droit international privé conduit à la perte de ce droit, l'État du for doit, dans la mesure du possible, accorder à l'ayant-droit un droit équivalent.

Article 19

Responsabilité sociale des entreprises

Les États et les organisations internationales doivent promouvoir la responsabilité sociale des entreprises concernant les droits de l'homme dans les relations transfrontières, compte tenu des standards fondamentaux de protection sociale et de l'environnement.

Article 20

Reconnaissance et exécution des décisions judiciaires

1. Le droit à un procès équitable implique une protection juridique en ce qui a trait tant à la reconnaissance qu'à l'exécution d'une décision judiciaire étrangère.
2. La reconnaissance ou l'exécution d'une décision judiciaire étrangère contre la volonté d'une partie est exclue si la procédure du tribunal étranger a violé le droit de cette partie à un procès équitable.
3. Les États favorisent l'adhésion à des instruments internationaux existants ou la conclusion d'accords internationaux sur la reconnaissance et l'exécution de décisions étrangères en matière civile et commerciale.
