

4th COMMISSION

Human Rights and Private International Law

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RESOLUTION

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 enjoyment of human rights depends on effective implementation and that the existing mechanisms under the relevant international instruments and in domestic legal systems can contribute to such implementation,

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 contribute to the interpretation and implementation 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 the present Resolution, the term “human rights” refers to all rights and freedoms which are protected under international law, including those set forth in the Universal Declaration of Human Rights and the International Covenants of 1966.

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 without any discrimination prohibited under international law at the stages of development, interpretation and application of private international law rules.
3. Only derogations from, and restrictions of, human rights that are compatible with international law shall be permitted.

Article 3

Jurisdiction

1. Heads of jurisdiction in international cases shall be based upon substantial connections with the case or the parties thereto, taking into consideration the parties' human right of access to a court.
2. The immunity of States should not deprive the victims of human rights violations in cross-border relations of their right of access to a court and to an effective remedy.

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 may exceptionally require that a court exercise jurisdiction if there is no closer link with a foreign State where access to justice would be available.

Article 5

Dispute settlement clauses

Any contractual dispute settlement clause leading to a denial of justice, including in particular clauses unilaterally imposing exclusive jurisdiction to a court or an arbitral tribunal or certain asymmetric clauses, are incompatible with the right of access to a court.

Article 6

Fair hearing

1. The national rules of civil or commercial procedure as applied to cross-border litigation 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 the 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

International public policy

In assessing whether the application of foreign law designated by the rules on conflict of laws complies with international public policy and in applying 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 and defend their rights.
2. Where a person, due to age, maturity or disability is unable to appear in person, or unable to enforce their rights or assume obligations without assistance before the court, the State shall provide appropriate arrangements to ensure that their views can be heard and given due weight.

Article 10

Personal status

Respect for the rights to family and private life requires the recognition of personal status established in a foreign State, provided that the person concerned has had a sufficient connection with the State of origin, in accordance with Article 3, paragraph 1, as well as with the State whose law has been applied, and that there is no manifest violation of the international public policy of the requested State, in accordance with Article 8.

Article 11

A person's name

1. A person's name forms part of that person's 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 their identity, including name and date of birth, recorded in a document accessible to the public and portable across borders.

Article 13

Marriage

1. Human rights law requires recognition of marriages based on the free and full consent of two spouses.
2. Child marriage and marriage concluded in the absence of the free and full consent of the spouses infringe upon human rights and shall not be recognized.

3. In interpreting and applying the forum's imperative norms which oppose the recognition of a marriage celebrated in a foreign country under the conditions of paragraph 2, 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 concerned third parties.

Article 14

Parentage

In view of the recognition of a parentage relationship established in a foreign State, the best interests of the child should be taken into particular account in the assessment of the 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 the child's 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 with a view to 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 the child's safety.

Article 18

Protection of property

1. States shall respect private property and other proprietary rights encumbering tangible goods 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 rights referred to in paragraph 1, the forum State shall grant the holder an equivalent right to the extent possible.

Article 19

Corporate social responsibility

States and international organizations shall make sure that corporations respect corporate social responsibility, including human rights, social and environmental rights and the fight against corruption.

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, or the competence of the court that rendered the judgment had no significant connection to the dispute.

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.
