PROTECTING THE RIGHT TO MULTICULTURAL EDUCATION

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Introduction

When does a child have a right to a «multicultural education»? [1] One case may be where a child is a full member of a minority community or indigenous population (by «full» member I mean that both parents are members of this community or population and that the child has been primarily raised within it).

Another case may be where the child's mother and father are members of different cultures, as reflected in differing customs, languages, religions, educational systems. If the parents live together, the child will easier access to both cultures which contribute to his or her roots. But if the parents reside in different regions of the same country or in different countries, the process of guaranteeing such access for the child becomes more difficult.

«Transnational» visitation

This is where international treaties come in. For in the absence of co-operation between countries within a treaty framework, guaranteeing access to both cultures is an uncertain exercise. If the child is sent

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abroad voluntarily, the parent whom (s)he visits may decide that the child should stay there and may seek a change of custody. The judge before whom the case is brought may have a hard time finding that the child should return to another (foreign) culture. The «best interests of the child», an indeterminate [2] standard even within one culture, may even become an obstacle to the child's welfare when applied by courts in different cultures [3], between which the child is being shuttled.

Thus the parent who has been entrusted with custody by his or her own courts naturally resists the suggestion that the child should be allowed to visit the other parent abroad. The courts, faced with the same uncertainty, hesitate to order the parent to send the child abroad. Either situation results in the child living in one culture and being deprived of access to the other parent and that parent's culture.

Several international treaties address this problem. For example, the *Hague Convention on the civil aspects of international child abduction* [4], now in force in 21 countries [5], attacks the problem of parental kidnapping directly by providing for prompt return of a child who is wrongfully removed or retained. This treaty recognizes that frustration of meaningful visitation rights is an important cause for parental kidnappings. Thus it encourages co-operation between the designated authorities in the different countries to set up transnational visitation, while at the same time removing the uncertainty by providing guarantees of the child's return at the end of the visitation period. While the «multicultural education» provided by such visitation may not be formal in nature, it can have greater impact than extensive instruction in the language or history of the other culture, since it provides an opportunity to participate —even briefly— in the living culture alongside the parent belonging to it.

The Hague Convention is of worldwide scope. Two important regional conventions parallel in certain respects its provisions directed against parental kidnapping, while providing facilities for obtaining recognition and enforcement of custody decrees or access orders. The *European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children* [6] is the more traditional of the two in its framework, providing for recognition and enforcement of both custody decrees and access orders. Thus «preventive» recognition of a custody decree may be sought in those States Parties which allow for such a proceeding; this may provide an additional guarantee of return of a child from visitation abroad, over and above the provisions for prompt return of the child in case of his or her «improper» retention.

The *Inter-American Convention on the international return of children* [7] is more closely aligned with the Hague Abduction Convention and does not contain express provisions for recognition and enforcement of custody decrees. «Preventive» recognition of a custody decree would therefore be, where available, a proceeding which would fall outside of the Convention. On the other hand, the Inter-American Convention provides expressly for requests addressed to judicial or administrative authorities seeking enforcement of visitation rights [8], and in this respect is more rigorous than the Hague Convention. The Inter-American Children's Institute, based in Montevideo, is charged with special responsability «for co-ordinating the activities of the Central Authorities within the scope of the Convention and for receiving and evaluating information from the States Parties in respect of application of the Convention» [9]. Given the broad experience of this specialized Organization of the Organization of American States in children's matterns —and notably education— it can be expected that the contribution that this treaty can make to multicultural education and understanding of children will not be overlooked.

«Transcultural» education

Aside from the education of children in the content and meaning of different cultures, there is a growing element of «transcultural» education in the very process of experiencing the effects of international treaties. Compliance by parents with a treaty gives the child an introduction to respect for law at the international level.

Some research has been done at the national level into a child's view of law. The results are mixed and frequently anecdotal. Children are said to know much more criminal law than civil law because of their exposure to television programs; even the form for addressing a judge in a continental European country may become a literal translation of the American usage: «Your Honor» [10].

Awareness of multinational rules of civil law must be even more vague. The international law or co-operation exposed on television mainly has to do with criminal acts: hijacking, terrorism, drug smuggling. Does the experience of being returned from one country to another through the orderly procedures for co-operation of courts and adminstrative authorities acting pursuant to a treaty have an impact o the child's transcultural education? Does his or her transnational visitation pursuant to a treaty also have such an impact? What better

education could there be in respect for law (instead of individual force) than to experience the extension of compliance with law beyond international frontiers?

Perhaps all this goes beyond the specific guarantees set out in the Convention on the rights of the child (CRC) [11]. Article 29 *c* of the CRC says that the child's education should include «the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own». We may add to this list: respect for values which transcend international frontiers as embodied in transnational laws and procedures. Article 29 *b* of the CRC requires specifically that education include developing in the child respect for human rights and fundamental freedoms, as well as the principles set out in the United Nations Charter. The operation of treaties designed to protect family and cultural ties give concrete reality to this education.

Joint and alternate custody and education

The development of thinking and practice concerning joint custody and alternating custody in the past dozen years has brought new possibilities for arranging multicultural education.

Views of custody in many countries, as recently as the late 1970's, focused on exclusive custody of one parent when the parents resided separately, and on restriction of access rights to a simple maintenance of personal contact between the children and the non-custodial parent. The rigidity of this concept, and strict insistence upon total separation of issues concerning child support and those concerning visitation, frequently resulted in the ability of a custodial parent to frustrate visitation rights completely —even when support was being paid.

Development of legal frameworks for joint and alternate custody —and the breaking down of conceptual resistance to such practices— offer new possibilities for organizing multicultural education of children.

Children who through their parents have windows on more than one culture are a precious resource for a world torn by intercultural and interethnic strife. Assuring them meaningful access to both cultures is a way of developing this resource. Moreover it is a way of bringing them to personal fulfilment. Unused capacities for communicating with —and within— a second culture will lead to frustration, leave a void.

We should do everything we can to make possible extended stays for the child in his or her second culture, all while attributing to the parent who belong to that culture the authority needed to protect the child during such stays and assuring the child's timely return when they end.

Mediation

Mediation between parents, now required during custody disputes in some jurisdictions, optional in others, offers a particular opportunity to educate the parents to the special needs of a child for intercultural education. Mediators who are to be assigned to families having multicultural elements, should themselves have undergone training in intercultural, awareness and communication between cultures [12].

It may be supposed that the phenomenon of «brainwashing» or «programming» by one parent [13], already broadly present in custody disputes within a single culture, may take on even more acute characteristics when the family is multicultural.

Thus mediators, as well as judges, should be alert to the possibility of programming or brainwashing of attitudes towards a culture, apart from specific «character assassination of a parent by another parent» [14], which is forbiden by statute in some States.

«Programming» and «brainwashing» are a distorted form of education, detrimental to the free development of the child's intellect and opinions, and thus may require re-education, or «deprogramming», as a remedy before the normal process of education can be resumed.

Intercountry adoptions

The extent to which children who are adopted internationally have a right to multicultural education is contested. From one point of view the child, having been adopted into a new culture, is better off to have all links cut with the culture of origin and to set about adapting totally to the new culture. This would appear to be particularly true for children adopted as new babies, except for the fact that the rhythms [15] of the biological mother's culture have already been programmed into the child, in the womb. Moreover, if the child's physical characteristics are markedly different from those of the majority of persons belonging to the new culture, his or her curiosity about the culture of origin will probably eventually be piqued.

Some countries require adoptive parents to spend a period of time in the culture of origin before the adoption is granted, or before it becomes final. Many agencies working with intercountry adoptions counsel the adoptive parents to provide information to the child about that culture and to show proper respect for it. Still, education about the culture or origin is probably sketchy in most cases and the chance to visit that culture may have await adulthood.

The third paragraph of Article 20 of the CRC calls for due regard to be paid to «the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background» when a child deprived of his or her family environment is to be placed in another family or in an institution. When the decision has gone in favour of intercountry adoption, other considerations presumably have outwighed these [16]. None the less, Article 29, *1, c* indicates that the child's education is to be directed, among other objects, to the development of respect for «the national values of the country... from which he or she may originate». How, and how far, such respect is to be inculcated may eventually be a topic for the committee monitoring the implementation of the CRC, pursuant to Articles 43-45 of this treaty.

Conclusion

The multicultural aspects of the education of children as set out in Article 29 of the CRC remain to be developed and elaborated in practice. Those treaties of a more specific character which provide mechanisms for maintaining the child's contact with a culture in which he or she does not habitually reside may play an important role in determining the content and scope of the rights granted in Article 29. Concepts of «multicultural» education and «intercultural» education should take into account the specific aspects of these rights and provide the theoretical underpinnings for their elaboration.

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Received: 13.VII.1991.

NOTES

[1] For elaboration of this term, see Margaret D. PUSCH (ed.) (1979) *Multicultural education: a cross-cultural training approach;* see also David S. HOOPES *et al.* (editors) (1978) *Overview of Intercultural Education, Training and Research,* vol. II: Education and Training.

[2] See MNOOKIN (1975) Child custody adjudication: judicial functions in the face of indeterminacy, *Law and Contemporary Problems,* 39:226; see also Council of Europe document No MJV-16(88)2 and addendum, submitted by the delegation of the United Kingdom, entitled: «The supremacy of the interests of the child in the field of private law.»

[3] See CHATIN, «Les conflits relatifs à la garde des enfants et au droit de visite en droit international privé», Travaux du Comité français de d.i.p., Séance du 12 mai 1982, p. 13 (Paris, Publication du Ministère de la Justice).

[4] Signed at The Hague 25 October 1980. Explanatory Report by Elisa PÉREZ-VERA in 1980 *Actes et documents de la Quatorzième session de la Conférence de La Haye de droit international privé,* tome III: Child Abduction, p. 426; see also Pedro-Pablo MIRALLES SANGRO (1989) *El secuestro internacional de menores y su incidencia en España, Especial consideración del Convenio de La Haya de 1980* (Madrid, Ministerio de Asuntos Sociales).

[5] Argentina, Australia, Austria, Belize, Canada, Denmark, France, Federal Republic of Germany, Hungary, Ireland, Luxemburg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, and the United States of America.

[6] Signed at Luxembourg 20 May 1980. The Parties are: Austria, Cyprus, Denmark, France, Federal Republic of Germany, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

[7] Signed at Montevideo 15 july 1989. Text in (1991) *Actas y Documentos Cuarta Conferencia Especializada Interamericana Sobre Derecho Internacional Privado (CIDIP-IV),* volumen I, p. 579.

[8] Article 21.

[9] Article 27.

[10] Remarks heard at the Nathalie Masse Seminar, *Les enfants et les lois,* Centre international de l'enfance, Paris, 4-5 April, 1991.

[11] Adopted by the General Assembly of the United Nations on 20 November 1989. At last count 85 countries had ratified this treaty.

[12] A 1987 survey of family lawyers in Greater London showed, *inter alia,* that 73.9 per cent considered knowledge by a mediator concerning «family ethnic and cultural differences» to be helpful; see Linda NEILSON (1990) *International Journal of Law and the Family,* vol. 4, No. 2, p. 252.

[13] See CLAWAR/RIVLIN (1991) *Children Held Hostage: dealing with programmed and brainwashed children* (American Bar Association, Section of Family Law).

[14] *Id.,* p. 4.

[15] See T. B. BRAZELTON (1989) *Families: Crisis and Caring,* pp. 214-218, cited in Van LOON (1990) *Report on Intercountry Adoption,* note 116.

[16] This may not always be true in the case of intercountry adoptions which do not cut all family ties of the child with his or her biological family, as, for example, is a allowed by the Belgian legislation adopted in 1987; see ERAUW/SARRE (1988) The new regime governing international adoptions in Belgium, *Netherlands*

International Law Review, vol. 35, p. 117. In some other countries, the Netherlands for example, the prospective adoptive parents must undergo a course of education about the child's culture or origin before the adoption will be granted.

SUMARIO: PROTEGIENDO EL DERECHO A LA EDUCACIÓN MULTICULTURAL.

El artículo presenta los problemas existentes para garantizar el derecho del niño a una educación multicultural en aquellos casos en que los padres, por diversas razones, viven en regiones diferentes de un mismo país o en diferentes países. El autor analiza la legislación internacional centrándose en el «Convenio de la Haya sobre los aspectos civiles del secuestro internacional de menores», el «Convenio del Consejo de Europa relativo al reconocimiento y la ejecución de decisiones en materia de custodia de menores, así como el restablecimiento de dicha custodia» y, por último, el «Convenio inter-Americano sobre el retorno internacional de menores». Estos tratados pretenden homogeneizar los criterios que han de prevalecer al defender el «interés superior del niño» entre diversos países. Es preciso regular las visitas del menor a uno de sus padres de modo que sean ocasiones propicias para conocer otra cultura, tal y como propone el apartado c) de la Convención de los Derechos del Niño. Esto requiere, por un lado, garantizar el regreso del niño al país donde está viviendo para impedir la práctica del «secuestro internacional de menores», así como extender la figura jurídica del «mediador» o «árbitro» —ya existente en algunos países— que evite la creación intencionada de actitudes negativas del niño hacia una de esas culturas. Un caso particular de este problema lo constituyen las adopciones de niños de otros países. En algunos países ya se requiere que los futuros padres adoptivos pasen un cierto tiempo en la cultura de origen del niño. Sin embargo, sigue siendo difícil resolver en estas situaciones el equilibrio cultural demandado en el artículo 29.1.c) de la Convención.

KEY WORDS: Multicultural education. Intercultural education. International child abduction, adoption, custody.