

Theses: Presentation Hess – Judicial Cooperation

1. International legal assistance is undergoing a period of transition. Earlier concepts of sovereign procedural assistance on the basis of international treaties and comity have been replaced by direct communication between courts and judicial authorities. At the regional level (in the European Judicial Area), it has even become possible to issue extraterritorial judicial acts (such as direct postal service, cross-border attachment of bank accounts).
2. The new concept of judicial assistance focuses on the needs of the parties whose procedural rights must (also) be guaranteed in judicial cooperation proceedings.
3. The international family law (i.e. child abduction, recovery of maintenance) has served as the pacemaker of the new development. It has extended the tasks and strengthened the role of central authorities which conduct the proceedings for the (often overburdened) parties from the stage of initiation of proceedings until the enforcement stage. In this context, the central authorities have been furnished with far-reaching competences to obtain and exchange information. Another development concerns enhancement of direct communication and cooperation of the courts dealing with the disputed issue, in particular with regard to the coordination of protection measures.
4. International legal assistance is increasingly controlled by international courts. They have elaborated minimum standards on the basis of the rule of law with regard to effective legal protection, the right to be heard and the protection of interested parties. This control is based on modern concepts of human rights protection.
5. International judicial cooperation must respect the rights of the parties. Direct judicial cooperation may impair neither the principle of party rule nor the right to be heard. Parties have comprehensive rights to examine and inspect the protocols of judicial communication. Parties are to be granted a right to attend coordination meetings of judges (for instance phone conferences). If the courts dealing with the dispute unanimously agree on a transfer of proceedings, parties must be given a right to challenge the agreement. The exercise of individual rights by central authorities is equally subject to judicial review.
6. The current state of regulation of judicial communication is insufficient with regard to the protection of party rights. In particular the European Judicial Area lacks legislative action. If the community legislator continues to enact legislation directly calling for judicial communication, the prerequisites and implementation of such communication must be determined and elaborated by secondary legislation.