

**Third Malta Judicial Conference on Cross-Frontier  
Family Law Issues**

**24-26 March 2009**

Welcome Address by Chief Justice Vincent A. De Gaetano

Honourable Minister,  
Mr Secretary General,  
Excellencies,  
Colleagues,  
Ladies and Gentlemen:

It is indeed an honour for me, on behalf of the Judiciary of Malta, to welcome you to this Third Malta Judicial Conference on Cross-Frontier Family Law Issues.

This Third Conference not only highlights the importance that participating members states and participating organisations attach to family law issues in situations of increasing mobility of persons between states, but it also vindicates in no small measure the foresight of the organisers of the First Conference. To be sure, family law issues are always very delicate matters. Those of us judges who have had the opportunity to sit in various courts in our respective jurisdictions – like the commercial court, criminal court, civil court, administrative court and family court to mention just a few – can generally attest to the fact that the family court is one of the most demanding courts for a judge: time-wise, and physically and psychologically. Personally I have found it to be so, and in fact

the practice that we have adopted in Malta is that a judge should not sit in the family court for more than four years at a stretch. Although family law cases are not generally complicated from a purely legal point of view, they are always intricate and very sensitive from a factual and human point of view. Family life and the right to establish a family are – as Articles 8 and 12 of the European Convention on Human Rights remind us – fundamental human rights. Within the context of a family relationship – whether that relationship is a sound one or a less sound one, or, indeed, a broken relationship – there is a constant interplay of strong human emotions and basic human needs which positive law on its own cannot generally satisfy. The emotions in particular may be misdirected because of the negative experiences of the parties involved. Very often the judge sitting in the family court has to draw upon his knowledge not so much of the law as of human relations and human emotions, and is more often called up to be a philosopher or a prophet rather than a lawyer. Child custody issues are, as we all know, the most demanding within the range of cases that generally fall within the competence of the family court. These are invariably further complicated when one or other of the parties decides to cross from one jurisdiction to another.

Although Malta is a very small jurisdiction when compared to most, if not all, of the jurisdictions here represented, we have had our fair share of cross-border family issues. I am sure that

the two judges ordinarily sitting in the Family Division of the Civil Court -- my colleagues Justices Cuschieri and Felice -- who will be participating fully in this Conference, have more recent and more direct experience of such problems. In the Court of Appeal and in the Constitutional Court, where I sit, the issues come packaged in a slightly different way, with the emphasis more on legal issues rather than on points of fact. This is not to say, of course, that they are devoid of the human touch – far from it. Three cases in particular come to mind: the Shaun Attard case, decided by the Court of Appeal on the 15 December 2006, which involved the application of Council Regulation 2201/2003 and the return of a Maltese lad to the jurisdiction of the English Courts; the Christopher Burdge case, decided on the 27 July 2007, which involved the return, again of a young boy, to the United States in terms of the Hague Convention on Child Abduction; and the Josephine Arsalan case, finally decided on the 8 July 2008, where both the first court and the Court of Appeal did not allow the request made by the central authority in Malta to have a young girl returned to her father in Turkey. In the Constitutional Court, family law issues with a cross-border dimension have tended to take the form of attempts to secure either nationality or freedom of movement to enable one party and the minor or minors involved to remain in Malta – two cases which come to mind are the Olena Tretyak case – a case with a Ukrainian dimension – decided by the Constitutional Court on 16 January 2006; and the Anne Miller case – a case with a Scottish dimension –

decided by the Constitutional Court on the 18 July 2006, and due again for a second decision by the same court, but this time on a slightly different issue, next Friday. Other issues which have arisen in the Constitutional Court relate to problems connected with obtaining the appropriate documents from foreign jurisdictions to allow the Marriage Registrar to issue the necessary banns preceding marriage. No doubt the number of irregular immigrants coming over to Malta from North Africa will in due course generate other peculiar family law issues which will have to be decided upon by the local courts. As my professor of constitutional law used to say in anticipation of his next lecture on some abstruse point of law: “pleasures yet to come”.

Within this “Malta Process” – as the dialogue underlying these Conferences has been called – one aspect which is of particular interest to us judges is the formal and informal networking which enables us to exchange information of a general nature on cross-border family law issues and, where appropriate, even information on specific cases. This process of networking, to which Malta began to be exposed and to be a part of in the mid nineteen eighties within the framework of the Council of Europe and its conventions on mutual judicial assistance, and which of course has been strengthened with our accession to the European Union, is being broadened through these Conferences to reach out well beyond the confines of Europe. Your presence

here is an eloquent tribute to the success of these Conferences in this respect.

Ladies and gentlemen, I am sure that this Third Conference will be a success like the previous two conferences, and I am sure that even this year you will have interesting discussions and a fruitful exchange of views. I wish you well and I thank you for your attention.

24/03/09