OPENING ADDRESS : AFTERNOON

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Ladies and gentlemen,

I would like first of all, as this session begins, to welcome the participants who were unable to be with us this morning and to thank the speakers who are honouring us with their presence.

I much regret to have to inform you that Professor Biruta LEWASZKIEWICZ-PETRYKOWSKA is unfortunately unable to be here, as originally planned, to speak on « Maternity of children born out of wedlock in comparative law ». I shall therefore say a few words by way of introduction to the topics on our agenda for this afternoon.

Having deviated somewhat, in analysing registered partnerships, from the path trodden by civil status officials in their daily work, we shall come back to a topic that is more familiar to us, namely the law of filiation.

In Western Europe, questions pertaining to filiation are giving rise, today just as in the past, to numerous and often controversial discussions. It is rather intriguing to see how differences that have grown up over the course of history have been able to withstand multiple modern influences.

*Thus, a German will think that he is living in the fascinating world of a historical novel when my colleague Pierre Murat speaks to us – as he will do in a moment – about « birth given by X » (*accouchement sous X*), unknown mothers, wards of the State and a* filius *or* filia nullius*, and when, perhaps, he recalls the wooden cylinders – the « turnstiles » – which used to be found in hospices and orphanages, where a newborn babe could be deposited anonymously from the outside and, when the cylinder was turned and a bell rung, found himself inside the hospital awaiting a welcome.*

Conversely, a Frenchman has great difficulty in understanding why the Germans attach so much importance to the blood tie and the right to discover one's origins, but one has to realise that the notion of « secrecy of origins » – about which Mrs Dekeuwer-Défossez will speak to us – does not exist in Germany. A few weeks ago a German court obliged a 60-year-old mother to communicate the name of the biological father to her 40-year-old daughter. Although the mother pleaded that she had had sexual relations with three different men during the period of conception and that they had all since married, the court ordered her, on pain of a fine or imprisonment, to reveal the name and address of the potential fathers. Subsequently the three men underwent blood tests. Unlike the position under French law, in Germany a biological test can be carried out compulsorily, if necessary by calling in aid the police authorities. A Frenchman must be terrified by the idea that in Germany potential fathers can be brought by force to a hospital to have a sample taken of their blood !

Again, it is rather surprising for a German to learn that in France the inviolability of the human body ceases to exist on death, as was the case with Yves Montand. In fact, the potential father has nothing to fear so long as he is alive. Nothing, not even a hair – be it not torn out but simply fallen on the ground –, can be the object of a genetic DNA test against the will of the person concerned.

Unlike continental Europeans, the English display a certain pragmatism. My colleague and friend Nigel Lowe – who will have the opportunity today of talking to us about Anglo-Saxon law – sent me a copy of a rather amusing decision of the English Court of Appeal. A mother who had had sexual relations with three different men (here we go again !) during the period of conception sued the most wealthy of the three in order to obtain maintenance. The man concerned refused to give a blood sample on the ground that a finding against him was in his view inconceivable, given that the chances of his really being the father did not exceed 33.3%. However, he was quite mistaken, because the English judges were not too appreciative of that kind of humour and had no hesitation in ordering him to pay maintenance, since a refusal to give a blood sample is entirely imputable to the defendant.

How different that case is from another one, coming from Germany, in which a man who had been in prison for several years contested his paternity. There was no doubt that on account of his imprisonment he could not be the biological father, and paternity had been recognised by the mother's lover. The German court nevertheless found it indispensable to order a blood test, on the ground that security in German prisons was not such that the possibility that the prisoner might have left the prison for a moment could be completely ruled out. Thus, unlike his English colleague, a German judge will not be satisfied with a 33.3% or even 99% probability : he must in all cases have a 100% proof. The logical consequence of the reasoning of the German lawyers is that recognition of paternity – the subject of the report by my German colleague Dieter Henrich – is not a declaration of wishes but more a declaration of knowledge or of fact, a sort of substitute for the establishment of paternity by a court, which of itself is necessary but expensive. Untruthful recognitions of the kind that are well known in France are almost unknown in Germany.

Those, ladies and gentlemen, were a few words by way of introduction. I can now give the floor to Professor Murat of Grenoble University, who will be speaking to us about anonymous childbirth and its legal effects.