



29.2.2016

NOTICE TO MEMBERS

Subject: Petition No 2434/2014 by Ruby Harrold-Claesson (Swedish), on behalf of the Nordic Committee for Human Rights (NKMR) on a report on child custody in Denmark, Finland, Norway and Sweden

1. Summary of petition

In a lengthy petition, the petitioner describes extensively problems in Scandinavian countries relating to child custody and taking children into care. The aim of the petition is to draw the Parliament's attention to the existing legislation in the countries mentioned, specifically in cases of forcibly taking children and young people into care. The view is that the administrative courts are unwilling to diverge from the stance adopted by social workers. The courts do not apply their obligation to ensure that cases coming before them have been carefully and sufficiently investigated, nor do they apply the European Convention on European Rights, which guarantees a fair trial and protection of private and family life.

The result is that these problems often lead to unsuitable foster parents being chosen, where conditions can be even more dangerous than the alleged conditions experienced when living with the parents. The petition states that besides the influence of social workers' opinions mentioned above, parents cannot choose a lawyer whom they trust. The petition certainly acknowledges that there are cases where taking a child into care is unavoidable, but these are in the minority.

The petition has its sights set on ending compulsory custody. It urges the Committee on Petitions to investigate the matter further, and to give a statement about how the Scandinavian countries are suited to international obligations.

2. Admissibility

Declared admissible on 15 October 2015. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 29 February 2016

The Commission has no general powers to intervene in individual child protection cases, which are set in a purely national context and have no link with EU law. In the same way, the Commission has no general powers to intervene with the Member States in the area of fundamental rights. It can only do so if an issue of European Union law is involved¹.

On the basis of the information provided by the petitioner, it does not appear that the matter is related to the implementation of European Union law. Decisions by competent national authorities concerning parental responsibility and custody when there is no cross border element are not regulated by European Union law. EU law as it currently stands, in particular Regulation (EC) No 2201/2003 ('the Brussels IIa Regulation')², only governs issues of jurisdiction and of recognition and enforcement of existing judgments in another Member State. Member States continue to regulate in their national law the substantive decisions; whether and under which conditions a child may be removed from parental care is embedded in the national legislation. The revision of the Regulation, currently prepared by the Commission, will not change this principle as the reform aims at enhancing the effectiveness of the existing procedures and will not extend the material scope of the instrument.

It should also be noted that the Regulation applies only to two Scandinavian countries, namely Sweden and Finland. Denmark in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union does not participate in the Regulation and is therefore neither bound by it nor subject to its application. Norway as non-EU State does not apply the Regulation.

In recent years the Commission has targeted funding under the rights of the child priority (Fundamental Rights and Citizenship Programme 2007-2013 and Rights, Equality and Citizenship Programme 2014-2020) at capacity-building for judicial, and other practitioners (such as child protection professionals) and professionals on child-friendly justice and children's rights in alternative care.³ When designing funding priorities, international standards are referenced to ensure that EU funding serves to better implement standards in Europe, namely the UN Convention on the rights of the child, the Council of Europe Guidelines on child-friendly justice and the UN Guidelines for the alternative care of children.

At a global level, more and more focus has been put on the need for a systems approach to child protection, to ensure that the system meets the needs of all children. With this in mind, the 2015 European Forum on the rights of the child focussed on coordination and cooperation in integrated child protection systems and proposed 10 principles for integrated child protection systems.⁴

¹ According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law. For more information concerning the Charter and the circumstances in which it applies, you may consult the fundamental rights section of the website of the European Commission's Directorate General for Justice and Consumers - http://ec.europa.eu/justice/fundamental-rights/index_en.htm.

² Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (so-called Brussels IIa Regulation).

³ For example: http://ec.europa.eu/justice/grants1/calls/just_2014_rchi_ag_prof_en.htm

⁴ http://ec.europa.eu/justice/fundamental-rights/child/protection-systems/index_en.htm ; 10 principles for integrated child protection systems: http://ec.europa.eu/justice/fundamental-rights/files/2015_forum_roc_background_en.pdf; 2015 Forum papers and report:

Conclusion

The Commission will continue to prioritise capacity-building on rights of the child for judicial and child protection authorities. However, based on the elements provided in the petition, the Commission cannot pursue this case, as the matter falls outside its competence.