

The Secretariat  
Committee on Petitions  
April 4, 2016  
[peti-secretariat@europarl.europa.eu](mailto:peti-secretariat@europarl.europa.eu)

## Memorial - Petition No. 2434/2014

Dear Mrs Chairman,

The Nordic Committee for Human Rights, NKMR/NCHR, would like to thank the Committee on Petitions for having declared our Petition concerning compulsory care in the Nordic countries admissible.

We would also like to thank the Committee on Petitions for affording us the possibility to substantiate our claim and elaborate on our standpoint that Brussels IIa Regulation is related to the implementation of European Union law and to demonstrate that the said Regulation is applicable to cases of compulsory foster care.

We would also like to thank the Committee on Petitions for inviting us to participate and make a presentation during the Committee's hearing on April 19, 2016.

### Brussels IIa Regulation and Foster care

The European Commission has, in its reply, received by PETI on 29 February 2016, stated: "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 involved."

At the outset, we would like to emphasize that the Petition that we have submitted is not one concerning individual child protection cases. Instead our Petition seeks to draw the attention of the European Parliament to the wanton, systemic, systematic removal of children from their families and foster home placements in Denmark, Finland<sup>1</sup>, Norway<sup>2</sup> and Sweden.<sup>3</sup>

---

<sup>1</sup> Solveig Holmström's lecture at the NCHR's Symposium 2013, 18 000 children deprived of family, [http://nkmr.org/docs/Solveig\\_Holmstroms\\_Gothenburg\\_lecture\\_2013.pdf](http://nkmr.org/docs/Solveig_Holmstroms_Gothenburg_lecture_2013.pdf).

<sup>2</sup> 39% or 20 704 children placed outside their homes in 2014, [http://www.bufdir.no/Statistikk\\_og\\_analyse/Barnevern/](http://www.bufdir.no/Statistikk_og_analyse/Barnevern/)

<sup>3</sup> Sweden's fifth periodic report to the CRC, 2007-2012. See Children deprived of a family environment, page 60 § 229 forward

The EU Fundamental Rights index includes the Rights of the Child and its presentation is as follows:

"Protection and promotion of the rights of the child is one of the objectives of the European Union. All policies and actions with an impact on children must be designed, implemented and monitored in line with the best interests of the child."<sup>4</sup>

Brussels IIa Regulation, Article 1, sets out the Scope of the Regulation:

1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

Section 2 stipulates the following:

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

(a) rights of custody and rights of access;

----

(d) the placement of the child in a foster family or institutional care;

Brussels IIa Regulation is therefore applicable on the matters that are raised in our Petition, namely, the removal of children by the social authorities in our four respective countries and the placement of children in foster families or institutions.

In support of our view that Brussels IIa Regulation is applicable for this Petition, we invoke a judgment of the European Court of Justice, ECJ, whose duty it is to interpret the statutes of the European Union and make Case Law, that is binding for the Member States. Here follows a summary of the

### **JUDGMENT OF THE COURT (Grand Chamber), CASE C-435/06, 27 November 2007<sup>5</sup>**

Relying on the supremacy of the said Grand Chamber judgment, we quote certain passages and we also attach the judgment for the knowledge of the Petitions Committee.

Quote from the Grand Chamber judgment:

"THE COURT (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and A. Tizzano, Presidents of Chambers, R. Schintgen, J.N. Cunha Rodrigues (Rapporteur), R. Silva de Lapuerta, J.-C. Bonichot, T. von Danwitz and A. Arabadjiev, Judges, Advocate General: J. Kokott, Registrar: R. Grass,

after considering the observations submitted on behalf of:

— Ms C (the Mother, our observation), by M. Fredman, asianajaja, the Finnish Government, by A. Guimaraes-Purokoski, acting as Agent, the German Government, by M. Lumma, acting as Agent, the French Government, by G. de Bergues and A.-L. During, acting as Agents, the Netherlands Government, by H.G. Sevenster, acting as Agent, the Slovak Government, by J. Corba, acting as Agent, the Swedish Government, by A. Kruse, acting as Agent, the Commission of the European Communities, by M. Wilderspin and P. Aalto, acting as Agents, after hearing the Opinion of the Advocate General at the sitting on 20 September 2007, gives the following

---

<http://www.government.se/reports/2012/08/swedens-fifth-periodic-report-to-the-un-committee-on-the-rights-of-the-child-on-the-implementation-of-the-convention-on-the-rights-of-the-child-2007-2012/> .

<sup>4</sup> [http://ec.europa.eu/justice/fundamental-rights/rights-child/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm).

<sup>5</sup> ECJ Case - jur2006\_J0435-06en01

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 2201/2003 of 27 November 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 (OJ 2000 L 338, p. 1), as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1) ('Regulation No 2201/2003').

2 The reference was made in the context of an appeal brought by Ms C, the mother of the children A and B, against the decision of the Oulun hallinto-oikeus (Administrative Court of Oulu, Finland) confirming the decision of the Finnish police ordering the handing over of her children to the Swedish authorities.

## Legal context

### *Community law*

3 Joint Declaration No 28 on Nordic Cooperation, annexed to the Treaty concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1), provides:

'The Contracting Parties record that Sweden, Finland and Norway, as members of the European Union, intend to continue, in full compliance with Community law and the other provisions of the Treaty on European Union, Nordic Cooperation amongst themselves as well as with other countries and territories'

(...)

6 Under Article 2 of Regulation No 2201/2003:

'For the purposes of this Regulation:

Article 8(1) of that regulation provides:

'The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.'

(...)

### *The national legal systems*

12 The Swedish Care of Young Persons (Special Provisions) Act (lag med särskilda bestämmelser om vård av unga, SFS 1990 No 52) lays down measures for the protection of children, such as taking into care and placement against the will of the parents. If the health or development of the child is at risk, the social welfare board of the municipality may request the Länsrätt (County Administrative Court) to adopt appropriate measures. In urgent cases, that board may itself order those measures, subject to their confirmation by the Länsrätt.

(...)

13 Under Paragraph 1(1) of the Finnish Law on handing over persons to Iceland, Norway, Sweden or Denmark for the enforcement of a decision on taking into care or treatment (laki huoltoon tai hoitoon koskevan päätöksen täytäntöönpanoa varten tapahtuvasta luovuttamisesta Islantiin, Norjaan, Ruotsiin tai Tanskaan (761/1970), 'Law 761/1970'), any person subject to a care or treatment measure pursuant to a decision of the authorities in Iceland, Norway, Sweden or Denmark, may, on request with a view to its enforcement, be transferred from the Republic of Finland to the State concerned.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

14 On 23 February 2005, the Social Welfare Board of the town of L (Sweden) ordered the immediate taking into care of the children A and B, who were living in that town, with a view to placing them with a foster family. A, born in 2001, and B, born in 1999, both have Finnish nationality; A also has Swedish nationality.

15 On 1 March 2005, Ms C, accompanied by her children A and B, took up residence in Finland. Her move to that Member State was declared on 2 March 2005. The Finnish authorities registered her new residence on 10 March 2005, with effect from 1 March 2005.

16 The decision of the Social Welfare Board of the town of L was confirmed on 3 March 2005 by the Länsrätten i K län (County Administrative Court of K) (Sweden) before which the case had been brought for that purpose on 25 February 2005. That judicial confirmation procedure is required under Swedish law in all cases where a child is taken into care without the consent of the parents.

17 Having accepted that the case fell within the jurisdiction of the Swedish Courts, the Kammarrätten i M (Administrative Court of Appeal of M) (Sweden) dismissed the appeal brought by Ms C against the decision of the Länsrätten i K län.

18 The jurisdiction of the Swedish courts was confirmed, on 20 June 2006, by the Regeringsrätten (Supreme Administrative Court) (Sweden).

19 On the same day that the Länsrätten i K län delivered its decision, the Swedish police had requested the Finnish police of the town of H, where the two children were staying with their grandmother, to assist them in the enforcement of that decision. That request was submitted pursuant to Law 761/1970.

20 By decision of 8 March 2005, the Finnish police ordered the handing over of the children A and B to the Swedish authorities. Ms C brought an appeal against that decision before the Oulun hallinto-oikeus, which that court dismissed.

21 Ms C subsequently appealed to the Korkein hallinto-oikeus (Supreme Administrative Court) which considered that an interpretation of the scope of Regulation No 2201/2003 was necessary for it to decide the dispute in the main proceedings.

22 Pointing out that decisions on the taking into care and placement of children are governed, in Finland, by public law, the Korkein hallinto-oikeus raised the question whether such decisions fell within the definition of civil matters' in that regulation. Moreover, given that, in Finland, child protection necessitates the adoption of not just one decision, but a whole series of decisions, that court also raised the question whether the regulation covers both the taking into care and the placement of children or solely the placement decision.

23 Against that background, the Korkein hallinto-oikeus decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Does ... Regulation ... No 2201/2003 ... apply, in a case such as the present, to the enforcement of a public law decision in connection with child welfare, relating to the immediate taking into care of a child and his or her placement in a foster family outside the

home, taken as a single decision, in its entirety;

(b) or solely to that part of the decision relating to placement outside the home in a foster family, having regard to the provision in Article 1(2)(d) of the regulation;

(c) and, in the latter case, is ... Regulation [No 2201/2003] applicable to a decision on placement contained in one on taking into care, even if the latter decision, on which the placement decision is dependent, is itself subject to legislation, based on the mutual recognition and enforcement of judgments and administrative decisions that has been harmonised in cooperation between the Member States concerned?

(2) If the answer to Question 1(a) is in the affirmative, is it possible, given that ... Regulation [No 2201/2003] takes no account of the legislation harmonised by the Nordic Council on the recognition and enforcement of public law decisions on placement, as described above, but solely of a corresponding private law convention, nevertheless to apply this harmonised legislation based on the direct recognition and enforcement of administrative decisions as a form of cooperation between administrative authorities to the taking into care of a child?

(3) If the answer to Question 1(a) is in the affirmative and that to Question 2 is in the negative, does ... Regulation [No 2201/2003] apply *ratio temporis* to a case, taking account of Articles 72 and 64(2) of ... [R]egulation [No 2201/2003] and the abovementioned harmonised Nordic legislation on public law decisions on taking into care, if in Sweden the administrative authorities took their decision both on immediate taking into care and on placement with a foster family on 23 February 2005 and submitted their decision on immediate taking into care to the Länsrätt for confirmation on 25 February 2005, and that court accordingly confirmed the decision on 3 March 2005?

#### **The questions referred for a preliminary ruling**

##### *Question 1(a)*

24 By this question, the national court asks essentially whether Article 1(1) of Regulation No 2201/2003 is to be interpreted, first, as applying to a single decision which orders the immediate taking into care and placement of a child outside the original home in a foster family and, second, whether that decision falls within the definition of civil matters' for the purposes of that provision, where it was adopted in the context of rules of public law relating to child protection.

25 As regards the decision to take a child into care, it is necessary to determine whether that decision relates to parental responsibility and whether, consequently, it comes within the scope of Regulation No 2201/2003.

26 In that respect, it should be noted that, according to Article 1(1)(b) thereof, Regulation No 2201/2003 is to apply, whatever the nature of the court or tribunal, in civil matters relating to the attribution, exercise, delegation, restriction or termination of parental responsibility. Moreover, under Article 2(1) of that regulation, the term court' is to cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of the regulation.

27 Under Article 2(7) of that same regulation, 'parental responsibility' encompasses all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect, including rights of custody and rights of access.

28 Taking a child into care does not feature expressly amongst the matters which, according to Article 1(2) of the regulation, relate to parental responsibility.

29 That fact cannot, however, exclude a decision to take a child into care from the scope of Regulation No 2201/2003.

30 The use of the words 'in particular' in Article 1(2) of that regulation implies that the list contained in that provision is only to be used as a guide.

31 Moreover, it is clear from Recital 5 in the preamble to Regulation No 2201/2003 that, in order to ensure equality for all children, that regulation covers all decisions on parental responsibility, including measures for the protection of the child.

32 A decision to take a child into care, such as that at issue in the main proceedings, is inherently a public act the aim of which is to satisfy the need to protect and assist young persons.

33 In addition, it appears from the documents submitted to the Court that, in Finland, taking a child into care has the effect of conferring on the social welfare boards of that Member State the power to determine the child's place of residence. That measure is liable to affect the exercise of rights of custody which, according to Article 2(9) of Regulation No 2201/2003, specifically include the right to determine that place of residence. Therefore, that power concerns parental responsibility, since, according to Article 1(2) (a) of that regulation, rights of custody constitute one of the matters relating to that responsibility.

34 As regards placement, it should be noted that, in accordance with Article 1(2)(d) of Regulation No 2201/2003, the placement of the child in a foster family or in institutional care is one of the matters relating to parental responsibility.

35 As the Advocate General stated at point 28 of her Opinion, taking into care and placement are closely linked acts in the sense, first, that the decision to take into care can be adopted separately only as an interim measure and, secondly, that the placement of a child against the will of the parents is possible only after that child has been taken into care by the competent authority.

36 In those circumstances, the exclusion of a decision to take a child into care from the scope of Regulation No 2201/2003 would be likely to undermine the effectiveness of that regulation in Member States in which the protection of children, including their placement, requires the adoption of several decisions. Moreover since, in other Member States, such protection is afforded by means of a single decision, there is a risk that the equal treatment of the children concerned would be compromised.

(...)

#### **Decision of The Grand Chamber**

53 In the light of the foregoing considerations, the answer to Question 1(a) must be that Article 1(1) of Regulation No 2201/2003 is to be interpreted to the effect that a single decision ordering that a child be taken into care and placed outside his original home in a foster family is covered by the term 'civil matters', for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection."

The Grand Chamber judgment in Case C-435/06, 27 November 2007, clearly signifies that Brussels IIa Regulation is applicable on the subject matter for our Petition to the European Parliament Petitions Committee, which concerns the social services in Denmark, Finland, Norway and Sweden, removal of children from their families and placing them in foster homes to live among total strangers.

## **The Reception of the Grand Chamber judgment in Case C-435/06 in Sweden**

### **1 - The Swedish Government Bill 2007/08:98<sup>6</sup>**

A - In the Bill 2007/08:98, Sweden acknowledges that the assessment in the European Court of Justice's judgment in Case C 435/06 "C" comprises decisions within the domain of civil matters in accordance with the Brussels Regulation. The Court's interpretation is closely linked to the definition of the concept of parental responsibility and therefore applies to decisions made in accordance with the Law with special provisions for the care of the young (Lag (1990:52) med särskilda bestämmelser om vård av unga (LVU)) and the subsequent placement of children.

B - Sweden's National Board of Health and Welfare (Socialstyrelsen), has interpreted this even further so that it will also include judgments. The Board has published information pamphlets (Meddelandeblad<sup>7</sup>) in which the social workers are advised as to how the rules

---

<sup>6</sup> Prop 2007/08:98 om Bryssel II, pp 16-17. "Tillämpningen av Bryssel II-förordningen är begränsad till "civilrättsliga frågor" (artikel 1.1). I förordningen definieras inte innehållet i och räckvidden av detta begrepp. Användandet av det ska inte ses som en hänvisning till nationell rätt. En fråga kan alltså enligt intern rätt kategoriseras som offentligrättslig men ändå omfattas av förordningen. Avgörande är i stället om frågan enligt den för instrumentet självständiga gemenskapsrättsliga tolkningen är civilrättslig eller ej. Den tolkningen ska göras mot bakgrund av Bryssel II-förordningens syfte och systematik.

En fråga som utredningen särskilt tar upp när det gäller tillämpningsområdet är placeringar av barn utanför det egna hemmet. Utredningen diskuterar bl.a. om förfaranden enligt lagen (1990:52) med särskilda bestämmelser om vård av unga (LVU) omfattas av förordningen. Utredningen gör bedömningen att tvångsomhändertaganden inte omfattas och lämnar därför inte några förslag om hanteringen av sådana ärenden med internationellt inslag.

Sedan utredningen avslutat sitt arbete har den berörda tolkningsfrågan emellertid kommit under EG-domstolens bedömning i ett mål där högsta förvaltningsdomstolen i Finland begärt ett förhandsavgörande (dom den 27 november 2007 i mål C-435/06 "C"). I den finska domstolens mål hade en mor överklagat ett beslut av en finsk polismyndighet om att utlämna hennes två barn för verkställighet i Sverige av ett svenskt beslut om omedelbart omhändertagande av barnen för vård. Det finska beslutet om utlämning hade meddelats med stöd av den finska lag som ger uttryck för de i Norden harmoniserade reglerna om frihetsberövande åtgärder inom förvaltningsrätten. I Sverige finns motsvarande bestämmelser i lagen (1970:375) om utlämning till Danmark, Finland, Island eller Norge för verkställighet av beslut om vård eller behandling. Högsta förvaltningsdomstolen frågade om förordningen är tillämplig på verkställigheten, i alla dess delar, av ett beslut om omedelbart omhändertagande och åtföljande placering av barnen. Enligt EG-domstolens bedömning omfattas ett sådant beslut av begreppet civilrättsliga frågor i den mening som avses i förordningen. Domstolens tolkning anknyter på ett nära sätt till definitionen av begreppet föräldraansvar.

EG-domstolens dom aktualiserar flera olika frågor om socialnämndernas handläggning som inte har berörts närmare av utredningen."

<sup>7</sup> **Om meddelandeblad.** Meddelandeblad ges ut av Socialstyrelsen och innehåller i huvudsak information om juridiska frågor, krav, ansvar och åtgärder. Meddelandeblad har inte någon juridisk status. Meddelandeblad syftar till att överskådligt redogöra och uppmärksamma om exempelvis nya och uppdaterade lagar och förordningar, föreskrifter och allmänna råd samt om krav, ansvar och åtgärder som behöver vidtas.

should be adhered to.

The message sheet No. 4/2014, which is addressed to social councils, shows that the Brussels IIa Regulation contains rules that supplement the 1980 Hague Convention on child abduction. The message sheet refers to a judgment of the European Court of Justice in 2007 which determined that the Brussels IIa Regulation also includes public law measures such as LVU decisions, making direct allusion to the Case C 435/06 "C".

### **C - The Swedish legal scientific journal, Svensk juristtidning - Svjt 2008<sup>8</sup>**

The Swedish legal scientific journal presented the Grand Chamber judgment in Case C-435/06 to the legal professionals in 2008.

### **Closing Remarks**

On October 27, 2015, The Courts Administration (Domstolsverket)<sup>9</sup> published statistics over the increase of public care cases between 2005-2014 for the Administrative Courts and the Administrative Courts of Appeal. The increase for the Administrative Courts was 53 percent, and that of the Administrative Courts of Appeal was 102 percent.

The latest Government Proposition, SOU 2015:71<sup>10</sup>, published on November 2, 2015, recommends adoption without parental consent for children who have been forcibly removed from their families. The word adoption is repeated 314 times in the 689 page long document.

In closing, we would like to point out to the Petitions Committee that the social authorities forcible removal of children from their families with subsequent foster home placement, does not only occur in the Nordic countries, but also in many other Member States of the European Union for eg The Netherlands, Great Britain and Germany. However the ever increasing numbers indicate that we are facing a gross system failure.

---

Socialstyrelsens meddelandeblad vänder sig i första hand till verksamheter inom kommuner och landsting samt enskilda och privata verksamheter.

#### <sup>8</sup> **13. Dom av den 27 november 2007 i mål C-435/06, C**

Genom denna dom har EG-domstolen klaggjort tillämpningsområdet för den s.k. Bryssel II-förordningen om domstols behörighet och om erkännande och verkställighet av domar i äktenskapsmål och mål om föräldraansvar. Enligt artikel 1.1 b) i Bryssel II-förordningen skall förordningen tillämpas på "civilrättsliga frågor" om "utövande, [...] upphörande eller begränsande av föräldraansvar". EG-domstolen uttalade bl.a. att begreppet "civilrättsliga frågor" skall tolkas självständigt för att ge Bryssel II-förordningen en enhetlig tillämpning i medlemsstaterna. Med hänsyn bl.a. till att begreppet "föräldraansvar" getts en vid innebörd i förordningen ansåg domstolen att det saknade betydelse om detta ansvar påverkades av en statlig skyddsåtgärd eller av ett beslut som antagits på initiativ av vårdnadshavarna. Begreppet "civilrättsliga frågor" skulle således tolkas på så sätt att det till och med kunde omfatta åtgärder som enligt en medlemsstats lagstiftning faller under den offentliga rätten. Det förhållandet att uttrycket "omhändertagande av barn" inte uttryckligen räknades upp bland de frågor som rör föräldraansvar saknade betydelse eftersom uppräknningen inte var uttömmande. EG-domstolens slutsats blev således att sådant omhändertagande av barn av de offentliga myndigheterna som var i fråga i målet vid den nationella domstolen omfattades av Bryssel II-förordningens tillämpningsområde. EG-domstolens tolkning av uttrycket "civilrättsliga frågor" framstår — om man ser till uttryckets normala innebörd — som minst sagt radikal. Genom den vida tolkningen av det ifrågasvarande uttrycket undviker domstolen emellertid gränsdragningsproblem när det gäller förordningens tillämpningsområde. Många frågor om föräldraansvar, vårdnad och umgänge har inslag av både civilrätt och offentlig rätt. En gemensam handläggning av dessa frågor framstår som sakligt motiverad."

<sup>9</sup> Kraftig ökning av antalet LVU-mål, <http://www.svt.se/nyheter/lokalt/vasterbotten/kraftig-okning-av-antalet-lvu-mal>

<sup>10</sup> [SOU 2015:71 Slutbetänkandet Barns och ungas rätt vid tvångsvård. Förslag till ny LVU](#)



Brussels IIa Regulation is related to the implementation of European Union law. Therefore, the said Regulation is applicable to cases of compulsory foster care.

Very truly yours,

*Ruby Harrold-Claesson*

Ruby Harrold-Claesson, (Mrs)  
Lawyer, Göteborg, Sweden,  
President of the NCHR  
[www.nkmr.org](http://www.nkmr.org)