



29.8.2014

## NOTICE TO MEMBERS

**Subject: Petition No 1609/2013 by Yahiaoui Boualem (German), on alleged neglect of the wellbeing of his child by the Jugendamt**

### 1. Summary of petition

The petitioner complains that the Jugendamt neglects its tasks of helping him to take care of his son, who has psychological problems. Instead the Jugendamt has helped his ex-partner to bring the child to Austria. The petitioner considers this to be abduction as he and his ex-partner have shared custody. The petitioner's son is now in a mental institution in Austria. He has also complained at the Austrian Jugendamt but his complaint has not been taken seriously. The petitioner would like his son to stay with him but he points out that as a father there is not much chance to see that happening, in particular because he is of foreign origin. The petitioner requests the European Parliament to help him.

### 2. Admissibility

Declared admissible on 4 June 2014. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 29 August 2014

The Commission notes that the growing mobility of citizens within the Union has led to an increasing number of families with an international dimension. These are notably families whose members are of different nationalities or live in a Member State of which one or more of them are not nationals. Where families break up, cooperation between Member States based on mutual trust is particularly necessary to give children a secure legal environment to maintain relations with both parents. In addition, the parent granted with visiting rights should be able to exercise them, even across borders, in so far as it complies with the relevant legal

provisions and court's decisions issued in the specific case.

In the area of family law, the Brussels II a Regulation (the Regulation) is the cornerstone of judicial cooperation in matrimonial matters and matters of parental responsibility. In relations between children and their parents, the Regulation determines the competent court to settle parental responsibility disputes including custody and visiting rights, primarily aiming at the protection of the best interests of the child. It also enables the custody and access rights judgments obtained in one Member State to be recognised and enforced in another Member State.

The claim of the petitioner relates to the determination of access rights which is an issue of substantive family law. These matters are exclusively governed by the national law. The petitioner mentions that the proceedings are currently pending before the Austrian court. Therefore, the Commission considers that it is for national courts to make the assessment requested by the petitioner, notably as regards the conditions and arrangements for visiting rights. Likewise, the national court should decide on the potential involvement of the child welfare authority in assisting the child.

Furthermore, the petitioner alleges that the child has been abducted to Austria by the mother. The Commission would like to stress that the Regulation includes a mechanism for the return of the child to his habitual residence and would therefore advise the petitioner to contact the German central authority<sup>1</sup> if he considers that such a procedure should be launched.

### Conclusion

The Commission understands the petitioner's concern as regards problems with maintaining regular contacts with his son and ensuring sufficient treatment to tackle the child's mental problems. It considers that the re-examination of arrangements for visiting rights should be pursued in the responsible courts in Austria where proceedings are currently pending.

Because of the mere supporting role of child welfare authority that does not take decisions covered by the Brussels IIa Regulation, there is an insufficient link between their (non)intervention in the petitioner's case and the EU rules. The Commission does not consider that any specific action is necessary in this case as it could not identify an infringement of EU law.

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[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_jmm\\_centralauthorities\\_de\\_de.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jmm_centralauthorities_de_de.htm)