



16.3.2012

NOTICE TO MEMBERS

Subject: **Petition 0446/2011 by Laurent Verdière (French), on behalf of "SOS Enfants du Divorce 59-62", on Iceland's family law and its consequences for a French national**

1. Summary of petition

The petitioner refers to the case of a French national resident in Iceland who is unable to have as much contact as he wishes with this underage daughter because of Iceland's family law. Both of the parents and their daughter are French nationals living in Iceland, and the petitioner questions the legality of the decision delivered by the Icelandic legal authorities on the dissolution of their marriage and the associated granting of custody and visiting rights. The petitioner complains about Iceland's family law, which he considers to be archaic, in breach of human rights and contrary to the principles that apply in the EU, and calls on Parliament to ensure that Iceland is required to make the necessary changes to its legislation before its possible accession to the EU.

2. Admissibility

Declared admissible on 8 September 2011. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 16 December 2011

The matter of parental responsibility is regulated, within the European Union, by 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 responsibility¹ ("the Brussels II bis Regulation") which apply between Member States from 1

¹ OJ L 338, 23.12.2003, p. 1.

March 2005.

One of the main objectives of the Regulation is to ensure that a child can maintain contact with his/her parents after a separation even when they live in different Member States. The Regulation facilitates the exercise of cross-border access rights by ensuring that a judgement on access rights issued in one Member State is directly recognised and enforceable in another Member States provided it is accompanied by a certificate, issued under certain conditions. However, the Regulation only applies in the EU Member States and does not bind Iceland. At the international level, the case of the petitioner might fall within the scope of the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in matters of parental responsibility and measures for the protection of children. However, Iceland is not yet a party to this Convention. The Commission has expressly asked to Iceland to accede to the 1996 Convention in the context of discussions regarding its accession to the EU.

The Commission is not aware of any bilateral treaty between France and Iceland on the mutual recognition of judgments in the area of parental responsibility. Even if such a treaty existed, any obligation arising under it would be a bilateral matter to be resolved between the relevant French and Icelandic authorities. There would therefore seem to be no rules of international law preventing either state from exercising their jurisdiction under their respective national law. In the absence of any applicable rules of international law each state determines autonomously the conditions under which it recognises and enforces judgments in the area of parental responsibility given in another state. This may lead to conflicting decisions and highlights the importance of judicial cooperation to avoid such situations.

Having said this regarding the exercise of access right, the Commission remarks that the alleged abductions of the child from Iceland to France by the father and from France to Iceland by the mother would have been dealt under the 1980 Hague Convention on International Child Abduction, of which both France and Iceland are Parties. But there is no evidence of this in the documentation submitted by the petitioner.

Concerning the Icelandic rules on guardianship and access rights, the Commission would like to point out that, in the current situation, there is no harmonization of substantive rules at the EU level. The above-mentioned Regulation concerns only recognition and enforcement of decisions on access rights between EU Member States.

In the light of the above, the Commission, based on the current legal framework, cannot intervene in favour of the petitioner.

4. Commission reply (REV.), received on 16 Mars 2012

Following the Commission's communication of December 2011, the petitioner has provided the Petitions committee with some additional information.

The Commission has carefully examined this additional material. However, it appears that the latter did not contain any elements that would change the Commission's position such as expressed in the above mentioned communication.