



31.5.2013

NOTICE TO MEMBERS

Subject: Petition 1078/2012 by Marion Weilharter (Austrian), on the dispute over her child's abduction and on the enforcement of the Hague Agreement by Denmark

1. Summary of petition

The father of the Austrian petitioner's child is Danish. The Danish courts established that she illegally moved with her child to Austria in 2010. Danish courts repeatedly ruled that the father was to have custody of the child. The petitioner did not comply with these rulings. In the spring of 2012 the father kidnapped the child and returned it to Denmark. The petitioner accuses the Danish judiciary of malpractice. She has lodged a complaint with the European Court of Human Rights.

2. Admissibility

Declared admissible on 18 December 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 31 May 2013

The petitioner is an Austrian national who used to live in Denmark, where in 2006 she had a child with a Danish national. In 2010, she moved with the child to Austria and asked the Austrian courts to award her sole custody of the child. In parallel, the child's father petitioned the Danish authorities for custody of the child. A return procedure instituted by the father in Austria under the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children ('the 1980 European Convention') was unsuccessful. Subsequently, both parents obtained in their respective jurisdictions sole custody of the child. In April 2012, without the consent of the

mother, the father took the child from Austria back to Denmark, where the child now lives with his father. The petitioner has instituted return proceedings in Denmark under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention'). At first instance level and on appeal, Danish courts rejected the petitioner's return application. An application to the Appeals Permission Board for leave to take the case to the Danish Supreme Court was rejected. A previous complaint lodged with the European Court of Human Rights was declared inadmissible as at that time not all domestic legal remedies had been exhausted. The petitioner accuses the Danish authorities of acting illegally and arbitrarily and therefore asks the European Parliament to intervene.

The Commission's observations

Prevention of international parental child abduction is an essential element of EU policy to protect the rights of the child. The Commission addresses this issue both at Member State level and internationally. In relations with third countries, the Commission promotes accession to the 1980 Hague Convention and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children ('the 1996 Hague Convention'). Both Austria and Denmark are contracting parties to both Conventions.

As regards relations between EU Member States, Regulation (EC) No 2201/2003¹ ('the Brussels IIa Regulation') introduces even stricter rules on parental child abduction and mechanisms to avoid parallel proceedings and conflicting decisions in Member States. However, this Regulation does not apply to Denmark because of its particular position under Protocol 22 annexed to the Treaties. Denmark does not participate in EU civil justice instruments such as the Brussels IIa Regulation. Nor are matters relating to parental responsibility and parental child abduction dealt with in bilateral agreements between the EU and Denmark.

The petitioner's case is principally governed by the mechanisms and systems of cooperation established under the 1980 and 1996 Hague Conventions and the 1980 European Convention, which are not EU legal instruments. As the petitioner's case does not concern a potential breach of EU law by the Danish authorities, it falls outside the Commission's remit.

Conclusion

The Commission suggests that the petitioner contacts the Danish member of the International Hague Network of Judges, the Honourable Justice Marianne Lund Larsen at the City Court of Copenhagen, for further guidance especially on her return application under the 1980 Hague Convention. However, the Commission is not in a position to take action in this case, as it falls outside the Commission's remit.

¹ OJ L 338, 23.12.2003, p. 1.