



29.4.2015

## NOTICE TO MEMBERS

**Subject:** **Petition 1847/2013 by E.L.-S. (Dutch), on religious and ethnic discrimination against a child by the British authorities**

**Petition 2498/2013 by B.G. (United Kingdom), on the removal of her children by social services**

**Petition 2543/2013 by S.D. (British), on the return of her child, who has been taken into care by the British authorities**

**Petition 2546/2013 by A.B. (Lithuanian), on her son, who has been taken into care**

### 1. Summary of petition

#### **Petition 1847/2013**

The petitioner complains that the British authorities have taken custody of his son (born on 16.10.2002), a Netherlands national, against his will and the will of his son. The petitioner says that he is a single parent and that the mother's whereabouts are unknown. The boy's mother tongue is Russian, and he is an adherent of the Jewish faith. According to the petitioner, the boy has lost contact with his religion and no longer speaks Russian. The petitioner considers the custody to be contrary to Article 10 of the Charter of Fundamental Rights and Directive 2000/43/EC.

#### **Petition 2498/2013**

UK social services removed the petitioner's children for reasons with which she does not agree. The petition describes in detail the petitioner's disputes with various institutions in this matter. She has also attached detailed documentation.

### **Petition 2543/2013**

The petitioner complains about the conduct of an employee of the social services, who, she says, has made false accusations of sexual abuse of a mentally handicapped child. The abuse is alleged to have been committed by one or more members of the child's family. The petitioner also reports on the resultant court case, in which a psychologist who has known the child for some time is being ignored while a report by a psychologist who has only seen the child for two hours after the latter had already been taken into care is the centre of attention. Shortly before another court case begins, the charge of sexual abuse has been withdrawn and replaced with a charge of neglect. If the family applies to go abroad with the child, the mother and child must surrender their passports because of a suspicion that the child will be abducted. According to the petitioner, the social services intended from the outset to keep the child under state supervision and never to let it return home again. All the efforts of the social services were therefore geared to breaking the ties between the child and the family, inter alia by reducing access from once a week to once a month.

### **Petition 2546/2013**

The petitioner states that the police and Brent Social Services (in the United Kingdom) have taken her young son from her house without a court order. According to the social services, the child was not attending school. The petitioner says that this was because of the child's health and that in the meantime they had found a school near their home. The petitioner accuses an employee of the social services of using violence against the child's grandmother. The petitioner and her child are no longer living with the child's father because he was abusing the child. Because of threats by the father, the petitioner and her child left Lithuania and moved to the UK. The British social services, who had been informed of the situation, nonetheless insisted on contact between the child and the father. The petitioner also complains that her son is no longer permitted to speak his mother tongue, Lithuanian, and that she is also not permitted to speak Lithuanian to him. The petitioner regards that as a breach of her human rights and those of her son. The petitioner also claims that her son is not receiving the medical care that he needs. Moreover, the British authorities want her and her son to return to Lithuania so that her son can resume contact with his father. The petitioner is accordingly seeking the assistance of the European Parliament.

## **2. Admissibility**

Petition 1847-13 declared admissible on 8 July 2014.

Petition 2498-13 declared admissible on 23 October 2014.

Petition 2543-13 and 2546-13 declared admissible on 24 October 2014.

Information requested from Commission under Rule 216(6).

## **3. Commission reply, received on 29 April 2015**

Petitions 1847/2013, 2498/2013, 2543/2013 and 2546/2013

*Removal from parental care/adoptions without parental consent*

The Commission has no general competence to act in matters of family law or child protection and is not in a position to comment on individual cases. These cases may be subject to judicial proceedings in a Member State. The Commission is concerned that the hearing of some petitions is inappropriate with regard to cases that are subject to judicial review at national level and that it may raise false expectations.

On 15 December 2014, the Commission has nevertheless written to the UK authorities and requested information about the functioning of the British system. A response is still pending.

In England, when a child is taken into care the local authority must seek a care order from the court. The court must be satisfied that the child is not receiving the sort of care it would be reasonable to expect from a parent and this lack of care is causing the child significant harm. An appeal against the care order can be made within 21 days. Once a care order is made the child (and where possible the parents) and the local authority must agree a written plan to meet the child's needs. This includes making arrangements for contact with parents, relatives and friends. The attached link gives details on the procedures for taking a child into care in England and Wales:-

[http://www.adviceguide.org.uk/england/relationships\\_e/relationships\\_looking\\_after\\_people\\_e/children\\_and\\_local\\_authority\\_care.htm](http://www.adviceguide.org.uk/england/relationships_e/relationships_looking_after_people_e/children_and_local_authority_care.htm)

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 the child's right to be heard. 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.

There has been an increase in the number of petitions in the area of parental custody and child protection, where more and more cases involving children and/or parents from another EU Member State may be involved.

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, rather than targeting systems at specific groups of children. With this in mind, the Commission plans to publish guidance on integrated child protection systems.

The Guidance aims to promote shared understanding of what integrated child protection systems should achieve and to establish some key principles (grounded in EU and international standards) according to which the EU can and does act.

A key area of focus of the principles is on prevention of violence against children, which implies a series of measures and mechanisms, including awareness-raising, proactive policy and outreach measures on parenting and family support, universal and targeted social services, etc.

Principles will also address cross-border and transnational aspects, in particular the need to clarify roles and responsibilities, ensure a national focal point for cross-border aspects and to

adopt procedures and/or protocols for any cross-border aspects.

### Aspects concerning discrimination based on nationality, racial or ethnic origin

Directive 2000/43 of 29 June 2000 implements the principle of equal treatment between persons irrespective of racial or ethnic origin. The Directive does not cover decisions by local authorities as to whether children are in need of compulsory measures of care. Its scope is limited to the areas of employment, vocational guidance and training, social protection, social advantages, education and goods and services. It also does not cover difference of treatment based on nationality.

Article 10 of the Charter of Fundamental Rights provides for freedom of thought, conscience and religion. However, according to Article 51(1), the provisions of the Charter are addressed to Member States only when they are implementing European Union law. These four petitions do not concern the implementation of EU law. Therefore the United Kingdom was not bound by Article 10 of the Charter in these cases.

### Cross-border family disputes

In the area of family law the Brussels IIa Regulation (Council Regulation (EC) No 2201/2003) applies in such situations within the EU and was adopted with a view to taking into account the consequences of family break-ups. It introduces mechanisms for judicial cooperation between the EU Member States' authorities aiming at securing the principle of legal certainty with respect to jurisdiction and the recognition and enforcement of judgements. For example, it would apply in cross-border parental responsibility cases where a competent court has to be identified to hear the case or to a judgment concerning custody or access rights obtained in one Member State which needs to be recognised and enforced in another Member State. In contrast to this, the actual determination of custody or decision on placement of a child with a foster family including its conditions do not fall under EU competence as it concerns substantive family law matters. Substantive family law matters remain the sole responsibility of the Member States.

### Redress mechanisms

It is not always clear from petitions whether national remedies have been exhausted and any parent who feels that a judicial decision is unjust or who considers that their rights were violated should in the first instance seek redress at national level.

### International standards on child protection/adoption without parental consent<sup>1</sup>

Bearing in mind international standards, the Commission underlines the importance of clear and evolving guidance to social workers and child protection workers on measures to safeguard the child's rights and in particular the best interests.

International standards do not preclude recourse to adoptions. Adoption without parental consent is one of the options for children without parental care, and it may be the best option for some children. The best interests assessment must be done on an individual basis, and the child's right to be heard must be respected. For countries that do not permit adoption without

---

<sup>1</sup> [UN Guidelines for the alternative care of children](#)  
[The Handbook for implementing the UN Guidelines \(Cantwell et al \(2012\)\)](#)

parental consent, children whose parents cannot care for them may spend their entire childhood in institutions and/or in foster care, often with multiple placements. In line with the Convention, adoption may be an appropriate long-term solution for a child.

Article 24 Charter:

Children shall have the right to such protection and care as is necessary for their wellbeing. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her best interests.

Article 3 UNCRC – best interests of the child shall be a primary consideration (apart from adoption where it shall be the paramount consideration).

In determining the best interests of the child, the rights and legitimate interests of any other party (e.g. parents, other individuals, bodies or the state itself) should be taken into account. When a best interests decision has to be made between various appropriate and viable options for a child, it should in principle favour the solution considered to be the most positive for the child – immediately and in the longer term. Any final decision should be thoroughly compliant with all other rights of the child.

Article 7.1 UNCRC The child [...] as far as possible, has the right to know and be cared for by his or her parents.

Article 8.1 UNCRC States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.

Article 9.1 States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 16.1 No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

Article 18 UNCRC: States...recognise both parents have common responsibilities...States parties shall render appropriate assistance to parents in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19 UNCRC – States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence,

injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 21 on adoption – for adoption, the best interests of the child must be the paramount consideration.

UN Guidelines for the alternative care of children regulate alternative care up to an adoption decision:

The necessity principle (Is alternative care genuinely needed?) – includes prevention components around poverty, stigmatisation, discrimination, parent education, family support measures. Gatekeeping: ensure that children are admitted to alternative care only if all possible means of keeping them with parents or extended family have been examined. Discourage recourse to alternative care, (gatekeeping, parental support, prohibit recruitment of children for placement in care, eliminate system for funding care settings that encourage unnecessary placements and/or retention of children in alternative care. Reviews of placements on a regular basis.

The suitability principle – (if it is necessary to remove a child from parental care, ensure care is provided in an appropriate manner) – individual, case by case assessment, matching child's needs with one from a range of options. Priority should be given to family and community-based solutions, although residential care solutions are sometimes the most appropriate (e.g. if a child has been damaged in a negative family environment and cannot cope with a family). Formal minimum standards, e.g. compliance with human rights obligations, full access to basic services, adequate human resources, promote and facilitate appropriate contact with parents and or other family members, protect children from violence and exploitation, mandatory registration procedure for care providers, care providers cannot have primary goals of a political, religious or economic nature, establish an independent mechanism carrying out regular and unannounced visits. Ensure that the care settings meets the needs of the child: Foresee a full range of care options, assign gatekeeping tasks to qualified professionals, require the care provider's cooperation in finding an appropriate long-term solution for each child. Care settings must be reviewed on a regular basis.

## Conclusion

From the often limited information available it does not appear that the EU has specific competence under EU law in the areas that the petitioners complain about, i.e. decisions in relation to the care of children who are considered to be at risk.

In the area of rights of the child, the Commission will continue to prioritise capacity-building and to promote the prevention of violence against children, including better parenting and

family support.

In the context of the ongoing review of the Brussels IIa Regulation, the Commission will take account insofar as appropriate in the context of the nature of the instrument of some of the elements raised in these petitions in the area of cross-border judicial cooperation.