



Utskottet för framställningar

31.1.2018

Rapport och rekommendationer

till följd av verksamheten vid arbetsgruppen för frågor om barns välfärd

Utskottet för framställningar

Utskottet för framställningars medlemmar i arbetsgruppen:

Eleonora Evi	(EFDD) (Arbetsgruppens ordförande)
Julia Pitera	(PPE)
Edouard Martin	(S&D)
Rikke Karlsson	(ECR)
Beatriz Becerra Basterrechea	(ALDE)
som ersatts av Yana Toom från och med november 2016	
Tatjana Ždanoka	(Verts/ALE)
Kostadinka Kuneva	(GUE/NGL)

Utskottet för framställningars suppleanter i arbetsgruppen:

Roberta Metsola	(PPE)
Jude Kirton-Darling	(S&D)
Notis Marias	(ECR)

JURI-utskottets medlem i arbetsgruppen

Enrico Gasbarra	(S&D)
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JURI-utskottets suppleant i arbetsgruppen

Jean-Marie Cavada	(ALDE)
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Inledning

Denna informella arbetsgrupps mandat baserades ursprungligen på fyra huvudsakliga ämnen med anknytning till de framställningar som mottagits:

1. Barn som förs bort vid internationella vårdnadstvister.
2. *Jugendamt*-myndigheten i Tyskland.
3. Adoptioner utan föräldrarnas samtycke i Förenade kungariket.
4. Försvunna spädbarn i Spanien.

Under arbetsgruppens mandatperiod skickades vissa framställningar till arbetsgruppen. När de inkom som isolerade, enskilda fall var de inte föremål för ett specifikt sammanträde.

Det beslutades att en femte punkt skulle diskuteras mer ingående vid sammanträdet i februari 2017: framställningarna avseende socialtjänsten i de nordiska länderna.

Arbetsgruppens mandat avsåg fastställandet av eventuella systemiska brister som behöver tas itu med tack vare relevant information som lämnats av framställare och/eller andra intressenter och experter, och försök att finna praktiska och politiska lösningar på frågor där EU:s juridiska behörighetsområden är begränsade. Tanken var att man skulle diskutera dålig praxis, olämpligt genomförande, felaktig tolkning av lagar, skillnader mellan rättsliga avgöranden och verkställandet av domar. Arbetsgruppen fann ofta gränsöverskridande element eller gränsöverskridande konsekvenser i de fall som togs upp.

Externa gäster bjöds in till varje sammanträde för att diskutera med medlemmarna om sin respektive expertis och erfarenhet i förhållande till de frågor som tas upp i framställningarna.

Sammanlagt har medlemmarna i arbetsgruppen sammanträtt åtta gånger mellan oktober 2015 och mars 2017.

I. Sammanfattande rapport från sammanträdena

I denna del av rapporten sammanfattas interventionerna av de experter som bjudits in till arbetsgruppens sammanträde. De åsikter som framförs är upphovsmännens och utgör inte nödvändigtvis arbetsgruppens eller PETI-utskottets medlemmars officiella ståndpunkt.

1. Inledande sammanträde (den 19 oktober 2015)

Gäster: *Joanna Serdynska* och *Ellen Gorris*, GD Rättsliga frågor

De två tjänstepersonerna från GD Rättsliga frågor presenterade den rättsliga ramen som står till EU-institutionernas förfogande vad avser EU:s lagstiftning om frågor rörande skydd av familjer och barn. De presenterade fler detaljer om Bryssel IIa-förordningen och den planerade omarbetade texten som ska offentliggöras under de kommande månaderna.

Anm: Förslaget till en omarbetning av rådets förordning om behörighet, erkännande och verkställighet av avgöranden i äktenskapsfrågor och frågor om föräldraansvar, och om internationella bortföranden av barn (Bryssel IIa-förordningen) har sedan dess

offentliggjorts, i juni 2016 (se <https://ec.europa.eu/transparency/regdoc/rep/1/2016/SV/1-2016-411-SV-F1-1.PDF>). PETI-utskottet röstade om ett yttrande till rapporten från utskottet för rättsliga frågor den 25 april 2017 (föredragande: Soledad Cabezón Ruiz, S&D).

Samordnarna i PETI-utskottet anförtrorde vid sitt sammanträde den 15 oktober 2015 medlemmarna i arbetsgruppen uppgiften att avfatta två frågor för muntligt besvarande i samarbete med JURI-utskottet angående ”Att skydda barnets bästa (över gränserna) i Europa”.

Texterna avseende frågorna för muntligt besvarande som togs upp vid plenarsammanträdet den 27 april 2016 finns här:

<http://www.europarl.europa.eu/sides/getDoc.do?type=OQ&reference=O-2016-000027&language=SV>

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+OQ+O-2016-000028+0+DOC+XML+V0//SV>

I bilaga I finns vissa referat från debatten vid plenarsammanträdet:

<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20160427&secondRef=ITEM-020&language=SV>.

<http://audiovisual.europarl.europa.eu/Assetdetail.aspx?ref=I120175>

2. **Europeiska kommissionens verksamheter inom frågor rörande barnets rätt och dess ståndpunkt avseende framställningar med anknytning till Jugendamt-myndighetens roll** (sammanträde torsdagen den 25 februari 2016)

Gäster:

Margaret Tuite, Europeiska kommissionens samordnare för barnets rättigheter.

Sina Van den Bogaert, Europeiska kommissionen enhet C.1

Margaret Tuite presenterade de huvudsakliga resultaten av arbetet som nyligen uppnått inom hennes avdelning och mer generellt inom det europeiska forumet om barns rättigheter. Hon betonade i synnerhet det diskussionsunderlag som utarbetats för det nionde forumet (offentliggjort i april 2015) som innehåller riktlinjer för samordning och samarbete inom integrerade system för skydd av barn (finns tillgängligt på:

https://ec.europa.eu/anti-trafficking/eu-policy/coordination-and-cooperation-integrated-child-protection-systems-reflection-paper_en)

Avseende framställningarna om Jugendamt utvecklade Sina Van den Bogaert kommissionens ståndpunkt om de frågor som tagits upp av framställarna rörande barnomsorgs- och barnavårdsnadsförfarandena i Tyskland. Hon upprepade kommissionens ståndpunkt, dvs. att den inte har några allmänna befogenheter att ingripa i enskilda fall, där rättigheter kan ha kränkts, som utspelar sig i ett rent nationellt sammanhang och inte har någon koppling till unionsrätten (exempelvis när det gäller många delar av

familjerätten). Hon påminde deltagarna om att Bryssel IIa-förordningen inte innehåller bestämmelser för materiell rätt som är tillämplig på föräldraansvar.

Därför råder kommissionen framställarna att utnyttja alla möjliga förfaranden för överklagande och prövning i Tyskland och att, som sista utväg, lämna in sina fall till Europeiska domstolen för de mänskliga rättigheterna.

Vissa medlemmar av arbetsgruppen nöjde sig inte med kommissionens upprepade ståndpunkt, och det beslutades att ännu ett sammanträde skulle ägnas åt frågan. Detta andra sammanträde hölls i september 2016 (se sammanträde 4 nedan).

Som uppföljning av de två frågorna för muntligt besvarande angående ”Att skydda barnets bästa (över gränserna) i Europa” beslutade utskottet för framställningar att lägga fram ett resolutionsförslag för att sammanfatta debatten om skydd av barnets bästa.

Europaparlamentets resolution av den 28 april 2016 om att skydda barnets bästa i hela EU på grundval av framställningar till Europaparlamentet finns här:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=SV&reference=P8-TA-2016-0142>

3. **Förfaranden rörande vårdnad om barn i Danmark** (sammanträde torsdagen den 26 april 2016)

Gäst: Pia Deleuran, jurist och medlare i Danmark.

Framställningarna som ingivits av icke-danska (ex)partner/(ex)makar till danska medborgare berörde de danska myndigheternas hantering av fall rörande barnomsorg/barnets välfärd, vårdnad och barn som förts bort i Danmark. Efter att dessa framställningar hade behandlats vid utskottssammanträdet beslutades om ett undersökningsbesök som ägde rum den 20 och 21 juni 2013. Utskottet antog ett arbetsdokument med vissa rekommendationer för den danska regeringen den 22 oktober 2013.

Pia Deleuran är jurist med 25 års erfarenhet av familjefrågor. Hon har, utöver en juristexamen, en examen i pedagogik från humanistiska fakulteten vid University of Copenhagen. Hon har verkat som medlare och som en av flera medlare i företagsmål, kommersiella mål samt familjemål i Danmark och för domstolarna mellan 2003 och 2007. Hon är verksam som utbildare vid Danish Association of Law firms och **arbetade vid tidpunkten för sammanträdet med ett projekt** med några andra experter för att uppmärksamma bristerna i systemet och föreslå vissa förbättringar.

Pia Deleuran fokuserade på vad hon anser vara de främsta bristerna i den danska lagen om föräldraansvar (Forældreansvarsloven 2007), som sågs över 2012 och åtföljdes av de så kallade ”Skilsmässopaketet 1” som trädde i kraft i oktober 2015 och innehåller föreskrifter om de biologiska föräldrarnas skyldigheter när det gäller konflikter som rör deras barn.

Den danska hållningen fokuserar på att få föräldrarna att förhandla fram en överenskommelse om vårdnaden av barnen och besöksrätt när deras förhållande eller äktenskap tagit slut. Förordningen syftar till att stödja båda föräldrarna vid ett

medlingsförfarande och att erbjuda större jämlikhet mellan mammor och pappor. Medlingen, inom ramen för ett system som kallas ”én indgang”, är obligatorisk och anordnas vid ett förvaltningsorgan kallat Statsförvaltningen (*Statsforvaltningen*) i syfte att hantera spörsmål såsom vårdnad, barnets hemvist samt besöksrätt. Alla fall rörande familjefrågor hanteras i första skedet av denna institution.

När det gäller vårdnad har, enligt Pia Deleuran, gemensam vårdnad fastställts i lagen som en grundregel (även för spädbarn som ammas). Hon anser att konceptet barnets bästa har omdefinierats som en enda fråga: att ha kontakt med båda föräldrarna.

Innan denna överenskommelse sluts är en första medlingsomgång tänkt att fastställa den tillfälliga besöksrätten. Besöksrätten syftar till att låta barnet ha kontakt med båda föräldrarna och beslutas utan en full utredning av problemen mellan föräldrarna och orsaken till deras konflikt. Hon drog därför slutsatsen att även i fall som rör våld i nära relationer förväntas det att offret ska delta i ett medlingsförfarande med angriparen.

Pia Deleuran citerade även meddelande nr 46/2012 som offentliggjordes i mars 2016 där kommittén för avskaffande av diskriminering av kvinnor rekommenderade att Danmark ser över och ändrar lagen om föräldraansvar.

Hon avslutade med att påminna om att detta system ursprungligen var tänkt som ett experiment och att det med tanke på resultaten bör ses över i syfte att säkerställa ett bättre skydd av barnets rättigheter och lika rättsliga garantier för båda föräldrarna i domstol, vid behov.

För ytterligare uppgifter se bilaga 2.

4. **Jugendamt-myndighetens roll och den tyska familjerätten**

(sammanträde torsdagen den 29 september 2016)

Gäster:

Marinella Colombo, italiensk journalist och författare.

Francesco Trapella, italiensk jurist.

Maître Muriel Bodin, fransk jurist.

Utskottet har mottagit ett stort antal framställningar med anknytning till Jugendamts roll och vissa aspekter av det tyska familjerättssystemet. Dessa framställningar var föremål för två undersökningsbesök till Berlin i mars 2007 och i november 2011 (se bifogade rapporter) och hanterades vid flera sammanträden (det sista i maj 2015). I grund och botten belyser de framställningar som tenderar att lämnas in av en kränkt förälder framställarnas reaktion på vad de uppfattar som en förmånlig behandling av föräldrar som är tyska medborgare tillsammans med hindren, svårigheterna eller omöjligheten för makar som inte är tyska medborgare att ha kontakt med sitt barn till och med vid övervakade besök (på grund av den strikta tillämpningen av språkreglerna, som innebär att endast tyska får användas).

De tre gästerna hanterade de berörda frågorna i de olika framställningarna genom olika infallsvinklar.

Först lämnade Marinella Colombo, tidigare framställare, närmare uppgifter om vad hon anser vara särskilda aspekter av det tyska familjerättssystemet på administrativ och rättslig nivå, och vad hon bedömer vara ursprunget till diskriminering av icke-tyska föräldrar. Hon anser att systemet kränker deras grundläggande rättigheter och vissa av de berörda barnens rättigheter.

Hon påpekade att ett av grundproblemen rör, enligt henne, översättningen av tyska juridiska termer, utöver det faktum att det tyska systemets institutioner och åtgärder saknar motsvarighet i andra europeiska jurisdiktioner.

Först betonade hon de konkreta befogenheter som tillskrivs *Jugendamt* i det tyska systemet, som automatiskt utses i domstolen till part i alla mål där en minderårig inbegrips, i enlighet med bestämmelserna i artikel 50 i bok VIII i den tyska sociallagen (*SGB = Sozialgesetzbuch*).

Hon sade att *Jugendamt* inte är en hjälp för domstolen, utan att det tvärtom lämnar sina rekommendationer till domstolen om det beslut som ska fattas långt innan den första förhandlingen. Om domstolen beslutar att lämna ett annat avgörande får *Jugendamt* överklaga beslutet. Dessutom kan *Jugendamt* besluta om tillfälliga åtgärder med anknytning till barnet innan domen verkställs, i synnerhet när *Beistandschaft* används, som leder till införandet genom administrativa medel av en serie bindande åtgärder genom tyst godkännande under det rättsliga förfarandet.

Enligt Marinella Colombo är *Verfahrensbeistand* (tidigare *Verfahrenspfleger*) en annan part i förfaranden som rör familjer i Tyskland, vilken inte har någon motpart i andra EU-länder.

Hon anser att detta skulle kunna felöversättas till ”barnets försvarare” medan denna persons rättsliga roll i själva verket, enligt henne, är att företräda den tyska statens intressen, och därför inte är konsekvent relaterad till syftet att främst säkerställa barnets bästa.

Hon tillade att en annan punkt där det tyska systemet skiljer sig från de i vissa andra EU-länder är det sätt på vilket barn frågas ut under familjeförfaranden.

Barn frågas ut från tre års ålder i Tyskland. I vissa andra länder anses de vara för unga och inte tillräckligt mogna för att höras i tvister som rör deras föräldrar. Därför skulle verkställandet av rättsliga avgöranden som fattats utomlands systematiskt nekas av de tyska myndigheterna i fall där barnen inte hörts, även vid väldigt låg ålder.

Marinella Colombo betonade dessutom att man i Tyskland inte spelar in utfrågningen av ett barn, och att varken föräldrarna eller deras advokater får närvara. Det är därför inte känt vilka frågor som har ställts eller, framför allt, hur de ställdes. Endast den tyska staten närvarar vid utfrågningen, nämligen domaren, *Verfahrensbeistand* och ofta även *Jugendamt*. Barnets föräldrar får endast en kortfattad sammanfattning av den berörda utfrågningen. Tanken bakom denna praxis är att säkerställa att barnet inte utsätts för påtryckningar av föräldrarna eller ställs till svars för sina svar.

Marinella Colombo påpekade att hon anser att *Kindeswohl* är en oerhört kontroversiell princip, som är bindande för alla parter som arbetar med familjelagstiftningsbeslut i Tyskland, eftersom den enligt henne måste ses mot bakgrund av de relaterade ekonomiska följderna – följder som är ett resultat av att Jugendamt fattar sina beslut med hänvisning till *Kindeswohl*.

Hon påminde deltagarna om att utskottet för framställningar år 2008 avfattade ett första arbetsdokument om Jugendamt, som bekräftade hur allvarliga och omfattande de dithörande problemen är men som inte innehöll något förslag på en färdriktning i sökandet efter en lösning.

År 2011, efter att utskottet för framställningar besökt Berlin, avfattades ett andra arbetsdokument, men hon anser att alla problem som lyfts fram kvarstår och blir allt svårare.

Hon antydde att den första framställningen mot Jugendamt (en framställning som ingavs av tio föräldrar) lämnades till Europaparlamentet för tio år sedan. I framställningen efterlystes att det ömsesidiga erkännandet av de tyska rättsliga avgörandena tillfälligt skulle upphöra till dess att den roll som Jugendamt spelar i att fatta beslut rörande familjetvister tydligt har fastställts. Enligt henne har alla relaterade kontroversiella aspekter sedan dess blivit betydligt mer omfattande och problematiska, på grund av avsaknaden av en reaktion som vederbörligen tar hänsyn till hur allvarliga omständigheterna är.

Francesco Trapella beskrev definitionen av den europeiska allmänna ordningen som ett användbarhetskriterium för bevis i brottmålsprocesser som rör brott på familjeområdet. Sammanfattningsvis förklarade han att eftersom familjen och förhållandet mellan föräldrar och barn är en del av den europeiska allmänna ordningen, i händelse av att föräldrarnas rättigheter med avseende på sina barn kränks under en rättegång, kan inte denna kränkning prövas i en domstol i en annan medlemsstat. Han sammanfattade sitt föredrag genom att konstatera att medlemsstaterna får utöva tillsyn över förhållandena mellan föräldrar och barn: verbet ”att utöva tillsyn över” från Grundgesetz är enbart kompatibelt med Strasbourgkonventionen om man uttolkar det som ”att skydda”. Enligt honom strider alla åtgärder som är mer ingripande än så mot unionsrätten eller, mer specifikt, den europeiska allmänna ordningen. Följderna av dessa ingripande åtgärder får inte spridas i unionen och åtgärderna får inte leda till att en ung person får en otillräcklig utbildning. Av dessa anledningar är de inte tillåtliga i ett förfarande, inte ens i en brottmålsprocess, eftersom de strider mot unionsrätten.

Slutligen betonade Muriel Bodin vad hon anser vara ursprunget till de potentiella kränkningarna av de grundläggande rättigheterna i det tyska rättssystemet, och särskilt Jugendamts roll och befogenheter. Hon anser ett av att de största problemen är att Jugendamt har egna kriterier för att fastställa vad som är barnets bästa, på grundval av samhällseliga snarare än familjebaserade kriterier; kriterier som tar hänsyn till den lokala förvaltningen snarare än till barnet som en individ. Det är även ansvarigt för genomförandet av familjedomstolens avgöranden, och det får tolka dessa avgöranden smalt eller brett och efter eget skön. Hon upprepade även en av Marinella Colombos anmärkningar om att de yttranden som lämnas av Jugendamt i praktiken är närmast obligatoriska, och att endast Jugendamt kan överklaga domarens avgöranden.

Som en uppföljning till dialogen med de tre gästerna diskuterades framställningarna mot Jugendamt och det tyska familjesystemet vid utskottet för framställningars sammanträde torsdagen den 10 november 2016, där en företrädare för en av Jugendamt-myndigheterna i Berlin diskuterade med utskottsmedlemmarna (se en sammanfattning av hans intervention i bilaga 4 D). Vid detta tillfälle tog arbetsgruppens ordförande, Eleonora Evi, upp en mängd frågor baserat på de diskussioner som hölls vid arbetsmötet och på de tre gästernas bidrag. Eftersom inte alla dessa frågor fick lämpliga svar beslutade utskottet att skicka ett brev med dem till de tyska myndigheterna (justitieministeriet och ministeriet för familjefrågor). Brevet skickades å hela utskottets vägnar, och undertecknades av Cecilia Wikström i början av februari 2017. Svaret från ministeriet för familjefrågor, som inkom i mars 2017, finns bifogat (bilaga 4).

Se fler detaljer om experternas respektive interventioner och det brev som skickades till de tyska myndigheterna i **bilaga 4**.

5. **Adoptioner utan samtycke i Förenade kungariket** (sammanträde torsdagen den 17 november 2016)

Gäster:

Pierre Chassagnieux och *Eric Colomer*, medregissör respektive producent för ett tv-reportage om situationen i England rörande barn som omhändertas utan deras biologiska föräldrars samtycke.

2. *Andrea Cisarova*, direktör för CIPS i Slovakien.

Utskottet för framställningar har tagit emot ca 20 framställningar om fall där barn har omhändertagits av myndigheterna i England och Wales och därefter adopterats bort utan de biologiska föräldrarnas samtycke (tvångsadoption). Först gavs några av framställarna tillfälle att presentera sina framställningar inför ledamöterna i utskottet för framställningar i februari 2014. Både Europeiska kommissionens avdelningar och brittiska myndigheter har yttrat sig. För att få en tydligare bild av situationen med ”tvångsadoption” fick Dr Claire Fenton-Glynn från Cambridge University i uppdrag av utredningsavdelningen att skriva en rapport, som hon lade fram inför utskottet i juli 2015. I ett tredje skede beslutade utskottet att anordna ett undersökningsbesök till London i november 2015. Den tillhörande rapporten, som inkluderar rekommendationer, antogs av utskottet i april 2016.

1. Medlemmarna i arbetsgruppen träffade Pierre Chassagnieux, fransk journalist, meddirektör för en tv-rapport (som sändes på fransk tv) med titeln ”Enfants volés en Angleterre” som gjordes sällskap av sin producent, Eric Colomer.

De avgav båda sina vittnesmål i flera fall rörande föräldrar och ensamstående mödrar som flytt Förenade kungariket för att undvika att deras barn omhändertas och placeras eller adopteras bort. De situationer de talade om var kopplade till de som presenterades i vissa av de mottagna framställningarna.

Bland de karaktäristiska aspekterna av förevarande fall förtjänar flera att nämnas här:

- Förebyggande åtgärder inrättades för att anpassa lagstiftningen så att socialtjänsten ska kunna göra en insats även i de fall där riskerna är obetydliga. Arbetsgruppen informerades om att denna lagstiftning ändrades efter en hemsk och väldigt uppmärksam story som inbegrep barbarisk behandling av ett litet

barn ("Baby P"). Socialtjänsten är därför i dag instruerad att inte ta några risker, vilket innebär att förebyggande åtgärder ibland vidtas, inte nödvändigtvis med grund i bevis utan enbart i statistik (vilket i slutändan innebär att fattigare hushåll anses vara mer "i riskzonen" och att socialtjänstens åtgärder mer riktas mot sådana). Allt sammantaget finns det, med jämförbara befolkningsgrupper, dubbelt så många barn inom omsorgen i Förenade kungariket än i Frankrike.

- Även det tempo i vilket hela placeringsförfarandet ska utföras gör att Förenade kungariket skiljer sig från andra EU-länder.

2. Medlemmarna hade även tillfälle att diskutera med Andrea Cisarova, direktör för det slovakiska centrumet för internationellt rättsligt skydd för barn (*CIPS*), vilket är den centrala myndigheten för Bryssel IIa-förordningen och Haagkonventionen i Slovakien. Hon påminde om det samarbete som upprättats mellan Slovakien och Förenade kungariket, i frågor rörande föräldraansvar, avseende insamling och utbyte av information om minderåriga och om fall där föräldrarna fräntas vårdnaden av barnen.

En av centrumets viktigaste verksamheter är att förhandla fram och teckna bilaterala avtal mellan de lokala myndigheterna i Förenade kungariket och centrumet i egenskap av Republiken Slovakiens centrala myndighet. Dessa avtal kallas samförståndsavtal och syftet med dem är att fastställa snabb och smidig kommunikation mellan den slovakiska centrala myndigheten och de lokala myndigheterna i Förenade kungariket i fall som inbegriper minderåriga slovakiska medborgare. Dessa avtal baseras på artiklarna 55 och 56 i rådets förordning (EG) nr 2201/2003 (Bryssel II a). Centrumet har för närvarande kunnat upprätta samarbete med två lokala myndigheter från Förenade kungariket och uppnått mycket positiva resultat.

Se fler uppgifter om Andrea Cisarovas intervention i **bilaga 3**.

6. **Försvunna spädbarn i Spanien** (sammanträde torsdagen den 8 december 2016).

Gäst: Maria Garzon, direktör för FIBGAR, en stiftelse för mänskliga rättigheter och internationell rättvisa.

De framställningar som mottagits är relaterade till fall där personal på olika sjukhus i Spanien anklagas för spädbarns försvinnande vid födseln. Föräldrarna fick inte träffa barnen och informerades om den nyföddes död några timmar eller dagar efteråt. Framställarna hävdar allvarliga inkonsekvenser i de medicinska rapporterna och i stadsfullmäktiges och kyrkogårdarnas register. De efterlyser ett bättre samarbete mellan de spanska myndigheterna för att fastslå sanningen, och, när det är möjligt, mer hjälp för att återförenera föräldrarna med de barn som har försvunnit.

I augusti 2015 svarade kommissionen att sådana åtgärder som vidtas och beslut som fattas av de spanska myndigheterna skulle relatera till civilrättsliga områden som inte regleras genom bestämmelser i EU-lagstiftningen [...] Rörande den fråga som framställarna hänvisar till är det därför upp till medlemsstaterna själva att säkerställa att deras skyldigheter avseende grundläggande rättigheter – i enlighet med internationella avtal och deras egna nationella lagstiftning – respekteras.

Dessa framställningar fanns på dagordningen vid utskottet för framställningars

Maria Garzon presenterade de åtgärder som stiftelsen hittills vidtagit i förhållande till nyfödda barns försvinnanden och vad som återstår att göra för att erbjuda de bästa möjligheterna för offren (föräldrarna och barnen) att få reda på sanningen.

Hon ansåg att de fall som lyftes i framställningarna kan förknippas med stöld och handel med tusentals spädbarn i Spanien. Hon påminde de närvarande om att det på 1930-talet, under diktatorn general Francisco Franco, växte det med regimens godkännande fram en praxis att ta ifrån föräldrarna deras barn vid födseln och placera dem hos familjer. Motiveringen var enligt henne först ideologisk, men årtal senare togs vissa spädbarn från sina biologiska föräldrar då dessa ansågs vara moraliskt – eller ekonomiskt – bristande och denna handel var en källa till stabila inkomster. Vissa sammanträffanden i de olika fallen visar på denna praxis systemiska karaktär. Enligt de data som samlats in rör det sig om totalt 300 000 offer, barnen och deras föräldrar inräknade.

Stiftelsen fokuserar på utredningen av och stödet till offren och institutionerna och utbildandet av den nya generationen. Stiftelsen förespråkar användande av övergångsrättvisa (rättvisa, sanning och ersättning till offer). Maria Garzon insisterade särskilt på vikten av att berätta sanningen och förklara situationen för de unga för att kunna genomföra övergångsrättvisa och lösa problemen från det förflutna, i syfte att trygga en bättre framtid för hela det spanska samhället. Om sanningen inte fastställs och det inte finns någon rättvisa för och ersättning till offren, hur ska man kunna garantera att det inte upprepas?

FN:s arbetsgrupp för frågor som rör påtvingade eller ofrivilliga försvinnanden och den särskilda rapportören om främjande av sanning, rättvisa, gottgörelse och garantier för icke-upprepning har begärt att Spanien inrättar en bank med DNA-data för att det ska gå att hitta de berörda barnen och underlätta för dem att återfå sin identitet. År 2013 upptäckte FN:s kommitté mot påtvingade försvinnanden att kriminella handlingar som motsvarar den definition av påtvingade försvinnanden som används i konventionen i den spanska straffrätten klassificeras som "olaga frihetsberövande/bortförande med försvinnande", vilket inte motsvarar definitionen i artikel 2 i den internationella konventionen till skydd för alla människor mot påtvingade försvinnanden. Kommittén rekommenderade att Spanien borde anta de lagstiftningsåtgärder som krävs för att göra påtvingat försvinnande till ett separat brott i linje med definitionen i artikel 2 i konventionen, och att brottet bör vara straffbart med lämpliga straff som beaktar dess extrema allvarighet.

Hittills har den spanska regeringen inte genomfört denna rekommendation. Diverse åtgärder har dock vidtagits på nationell nivå:

År 2011 upprättades en databas som innehåller både begäranden om administrativ information som lämnats av personer som berörs av fallen med stulna spädbarn och DNA-profiler.

I januari 2013 upprättades riktlinjer av justitieministeriet som harmoniserar de tekniska kriterierna för yrkespersoner som ingriper i sådana fall, särskilt med avseende på uppgrävning av eventuella kvarlevor av spädbarn som tagits från sina mödrar.

År 2013 inrättades en informationstjänst (som omfattar följande ministerier: justitieministeriet, inrikesministeriet, hälsovårdsministeriet och ministeriet för allmän beskattning).

I juni 2015 medgav justitieministern Rafael Catalá att ”detta är ett verkligt personligt och socialt drama” och upprepade regeringens åtagande att samarbeta med de icke-statliga organisationerna i syfte att underlätta för tillgång till information. Han meddelade att närmare 600 ärenden rörande ”stulna spädbarn” fortfarande var öppna. I juli samma år avsåg dock plenarförsamlingen ett resolutionsförslag vari regeringen ombads anta en mängd åtgärder, rörande bland annat en undersökningskommitté, slutförandet av DNA-databasen och erkännandet av rätten till rättslig hjälp.

Även om Cortes de Castilla-La Mancha i mars 2014 avsåg PSOE:s förslag om att inrätta en undersökningskommitté i ärendena rörande de ”stulna spädbarnen” godkände *Comisión de Justicia del Congreso* (kongressens justitieutskott) i april 2016 ett initiativ (*proposición no de ley*) som uppmanar regeringen att uppmantra till alla nödvändiga åtgärder för att utreda ärendena med försvunna spädbarn mellan 1940-talet och 1990-talet, såsom att underlätta upprättandet av DNA-banken som gör det möjligt för offren att jämföra data och hitta sina biologiska föräldrar/barn, att ge finansiell hjälp till de offer som inte har råd med DNA-testet, att främja alla åtgärder för psykologiskt stöd till offren i varje ”Comunidades Autonomas” och upprätta de mekanismer som krävs för att göra det möjligt för de drabbade familjerna att få tillgång till kostnadsfri rättsskipning. Dessvärre har regeringen hittills inte gjort något konkret.

Lokala parlament i exempelvis Andalusien har inlett några intressanta initiativ för att hjälpa offren att hitta sanningen.

Stiftelsen gör anspråk på rättsligt och psykologiskt stöd från regeringen och på kostnadsfri tillgång till den DNA-data som samlats in. Den har för detta ändamål inlett en namninsamling till regeringen, men enligt Maria Garzon är det oerhört svårt att inleda en diskussion om den francoistiska eran.

Hon specificerade att straffrättsliga förfaranden inte är möjliga på grund av amnestilagen som antogs i början av 1970-talet.

Maria Garzon anser att EU bör garantera att offren har tillgång till sina rättigheter. Hon uppmanar parlamentet att utfärda ett politiskt uttalande och politiska rekommendationer till den spanska staten i syfte att ge bättre stöd till de familjer som söker de försvunna spädbarnen och till de barn, som nu är vuxna, som letar efter sin identitet. De önskar att regeringen inrättar de juridiska resurser som krävs, ser till att de berörda sjukhusen och den katolska kyrkan samarbetar och förbättrar utbildningen om denna del av landets historia.

Anm: Utskottet för framställningar har schemalagt ett undersökningsbesök till Spanien i maj 2017 (den 23–24 maj) rörande frågan om försvunna spädbarn.

Se fler uppgifter om Maria Garzons intervention i bilaga 5.

7. Socialtjänsten i de nordiska länder (sammanträde torsdagen den 9 februari 2017)

Gäst: Lena Hellblom Sjögren, svensk psykolog. Hon har tidigare arbetat med att undersöka utredningar som gjorts av socialarbetare och av polis i Sverige och i de nordiska grannländerna. Hon har gett ut flera rapporter och böcker.

Syftet med den framställning som behandlades vid utskottssammanträdet i april 2016 var att uppmärksamma parlamentet på gällande lagstiftning i Sverige, Finland, Danmark och Norge¹, särskilt i fall rörande tvångsomhändertagande av barn och unga. Enligt framställarna säkerställer inte domstolarna att de mål som tas upp hos dem har utretts noggrant och tillräckligt. Dessa problem leder ofta till att olämpliga fosterföräldrar väljs.

I framställningen efterlyses att tvångsförvar upphör. Framställaren uppmanar utskottet för framställningar att utreda frågan ytterligare, och uttala sig om hur de nordiska länderna efterlever de internationella skyldigheterna på detta område.

I sitt svar uppger kommissionen att den inte har några allmänna befogenheter att ingripa i enskilda fall av skydd av barn som utspelar sig i ett rent nationellt sammanhang och inte har någon koppling till EU-rätten. På samma sätt har kommissionen inga allmänna befogenheter att ingripa i medlemsstaterna avseende de grundläggande rättigheterna, om EU:s lagstiftning inte omfattas.

Lena Hellblom Sjögren fokuserade på vad hon anser vara de främsta bristerna i systemet för skydd av barn i Sverige som leder till kränkningar av rätten till familjeliv, barnets rätt att behålla sin identitet och rätten till en rättvis rättegång.

Enligt henne är det främsta diskussionsämnet den vikt som fästs vid socialtjänstens uppfattning i hela förfarandet.

Utredningarna, som görs av socialarbetare (hon uppger att det främst är kvinnor som är socialsekreterare – 87 % – med en examen efter 3,5 års universitetsstudier), och dithörande rekommendationer utgör grunden för domar avseende barns och familjers framtida liv i domstol. Det är viktigt att notera att det inte finns några specialiserade familje- eller ungdomsdomstolar i Sverige.

De utredningar som socialarbetarna gör är tudelade: A. efter rapporter om oro för ett barn, så kallade barnutredningar, B. när en domstol har bett om en utredning rörande vårdnad, boende och/eller besök, så kallade vårdnadsutredningar.

Talaren anser att socialarbetarna, som kallas socialsekreterare, enligt socialtjänstlagen (SoL, som trädde i kraft den 1 januari 1982) är fria att tolka den lagen. Talaren anser även att de är fria att dokumentera det som de finner relevant, utan några krav på offentlig dokumentation, utan några nationella riktlinjer och, enligt Lena Hellblom Sjögren, utan några standardiserade

¹ Det bör noteras att förordning (EG) nr 2201/2003 endast gäller två nordiska länder, nämligen Sverige och Finland. Norge, i egenskap av stat som inte är med i EU, tillämpar den givetvis inte, Danmark, i enlighet med artiklarna 1 och 2 i det protokoll om Danmarks ställning som är fogat till fördraget om Europeiska unionen och fördraget om Europeiska unionens funktionssätt, deltar inte i förordningen och är därför inte bunden till den eller föremål för dess tillämpning.

metoder för att mäta hur barnet har upplevt föräldrarnas uppträdande (eller uppträdandet från de som agerar som barnets föräldrar) eller barnets välbefinnande och utan några tillförlitliga metoder för lämpliga riskbedömningar. I sina rapporter verkar dock socialsekreterarna bedöma barnens välbefinnande, föräldrarnas uppträdande och även vad de kallar riskerna för barnet i framtiden.

Ett annat problem som Lena Hellblom Sjögren lyfter fram är det faktum att socialsekreterarna i allt större utsträckning delegerar uppgiften att hitta fosterhem till privata företag. I nionde paragrafen, första kapitlet i den svenska regeringsformen föreskrivs emellertid följande: ”Domstolar samt förvaltningsmyndigheter och andra som fullgör offentliga förvaltningsuppgifter ska i sin verksamhet beakta allas likhet inför lagen samt iaktta saklighet och opartiskhet.”

Socialsekreterarnas rekommendationer lämnas till en lokal politisk socialnämnd, dvs. Socialnämnden. Denna nämnd beslutar i 98 % av fallen i enlighet med socialsekreterarnas rekommendationer. Nämndens beslut om vårdnad, boende och besöksrätt, och om att låta barnen få så kallad tvångsvård, skickas till domstolen som oftast följer beslutet.

Dessutom ges socialarbetarna enligt en lag från 1990 som kallas LVU frihet att ta barnen med tvång från deras mamma/pappa eller båda. Samtidigt är det tänkt att de ska hjälpa och ge råd till de berörda familjerna.

Talaren hävdar att inga experter deltar i utredningarna och rekommendationsförfarandet, förutom i sällsynta fall där socialtjänsten har rådfrågat en läkare eller psykolog för att göra ett uttalande.

Angående SoL sade talaren att det i dess femte paragraf föreskrivs att socialarbetarna, när det gäller barn som anses vara i riskzonen, i första hand ska överväga om barnet kan tas emot av någon anhörig eller annan närstående. Avsikten är att barnet inte ska förlora sina familjerötter. Enligt Lena Hellblom Sjögren respekteras dock inte denna artikel. Hon var bekymrad över resultaten av vissa studier, som betonar de problem som upplevs av barn som placeras i fosterhem (vad gäller skolresultat, psykiska problem, problem med narkotikaberoende, kriminalitet, rymningar, självmord) jämfört med de barn som stannade kvar i sitt riskfyllda hushåll eller adopterades. Lena Hellblom Sjögren citerade även studier som nämner den höga grad av klagomål avseende övergrepp från barn som placerats i fosterfamiljer.

Talaren föreslog slutligen ett förenande av socialtjänstens hjälp-/rådgivningsfunktion med de redan befintliga, väl spridda och välfungerande barnavårdscentraler och mödravårdscentraler med kompetenta och välutbildade läkare till familjevårdscentraler. Hon insisterade även på vikten av att tillhandahålla hjälp till de barn som är behövande inom deras familjer, och gör därmed gällande att det är hela familjen som först och främst behöver stöd. För ett barn är det traumatiserande att skiljas från sina föräldrar och nära och kära, och detta bör enbart ske om det föreligger ett allvarligt hot mot barnets hälsa eller liv.

Se fler uppgifter om Lena Hellblom Sjögrens intervention i bilaga 6.

Bilagor:

1. Referat från debatten vid plenarsammanträdet efter frågorna för muntligt besvarande (tal av Europeiska kommissionen och rådet)

2. Framställningar rörande Danmark: A. Förteckning över framställningar. B. Intervention av Pia Deleuran. C. Arbetsdokument om undersökningsbesöket.
(<http://www.europarl.europa.eu/committees/en/peti/working-documents.html>).
3. Framställningar rörande Förenade Kungariket: A. Förteckning över framställningar. B. Undersökning av adoptioner utan samtycke i Förenade kungariket
(http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU%282015%29519236_EN.pdf). C. Arbetsdokument om undersökningsbesöket.
(<http://www.europarl.europa.eu/cmsdata/110842/1092729EN.pdf>);
D. Intervention av Andrea Cisarova, direktör för CIPS i Slovakien
4. Framställningar rörande Tyskland (Jugendamt): A. Förteckning över framställningar. B. Arbetsdokument om undersökningsbesöket till Berlin.
(http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/dt/906/906407/906407sv.pdf);
C. Interventioner av: Marinella Colombo, italiensk journalist och författare, Francesco Trapella, italiensk jurist samt Muriel Bodin, fransk jurist. D. Sammanfattning av interventionen av en Jugendamt-företrädare vid utskottet för framställningars sammanträde, E. Skrivelse till de tyska myndigheterna.
5. A. Förteckning över relaterade framställningar, B. Intervention av Maria Garzon, direktör för FIBGAR,
6. A. Förteckning över relaterade framställningar, B. Intervention av Lena Hellblom Sjögren, svensk psykolog.

II. Rekommendationer

Utskottet för framställningar rekommenderar följande:

1. Utskottet efterlyser ett fullständigt förtydligande av den rättsliga grunden avseende koncepten ”barns välbefinnande” och ”barnets bästa” i alla nationella system, särskilt där det fortfarande finns otydliga eller kontroversiella tolkningar, i syfte att säkerställa lämpliga skydd av alla relaterade grundläggande rättigheter, som skyddas bl.a. på EU-nivå genom Europeiska unionens stadga om de grundläggande rättigheterna, och noterar även skillnaderna i tolkningen av begreppet ”hemvist”.
2. Utskottet påminner om Europaparlamentets resolution av den 28 april 2016 om att skydda barnets bästa i hela EU utgående från framställningar till Europaparlamentet, och påminner om de olika uppmaningarna till kommissionen och medlemsstaterna.
3. Utskottet uppmanar medlemsstaterna att förstärka alla skyddsåtgärder som syftar till att på lämpligt sätt förhindra potentiella kränkningar av rättigheterna för nationella och icke-nationella EU-medborgare inom alla familjetvister med gränsöverskridande konsekvenser, med särskilt fokus på tillfälliga åtgärder och oåterkalleliga beslut som berör barn, verkställandet av juridiska avgöranden och mekanismer för att utvärdera domarnas arbete.
4. Utskottet framhåller med kraft behovet av lämplig utbildning i de särskilda omständigheterna i samband med gränsöverskridande ärenden för alla nationella och lokala myndigheter som är involverade i förfaranden gällande barnomsorg och vårdnad om barn. Utskottet anser att sådan utbildning skulle förbättra kommunikationen och slutligen underlätta det nödvändiga samarbetet mellan de olika parterna.

5. Utskottet uppmanar medlemsstaterna att undvika diskriminerande eller missgynnade rättsliga och administrativa förfaranden mot utländska föräldrar, och att ge dem det språkliga stöd och den översättningshjälp de behöver. Utskottet noterar att diplomatiska och/eller konsulära representationer även skulle kunna tillhandahålla eller komplettera sådant stöd. Utskottet betonar behovet av ytterligare tillförlitligt konsulärt samarbete i gränsöverskridande fall i linje med Wienkonventionen, och upprättande av de nödvändiga strukturerna som till de berörda EU-medborgarna, personer som är bosatta i EU och deras ursprungsmedlemsstats konsulat i tid tillhandahåller information, rådgivning och rättsligt stöd till alla parter som deltar i förfarandena, nämligen med ett proaktivt tillvägagångssätt till både EU-medborgare i en annan medlemsstat som bor på deras territorium, och som även når deras egna medborgare som bor i en annan EU-medlemsstat.

6. Utskottet rekommenderar att medlemsstaterna från första början och under varje etapp av förfaranden som rör barn tillhandahåller föräldrarna fullständig och tydlig information om förfarandena och de eventuella konsekvenserna av dem. Utskottet uppmanar medlemsstaterna att underrätta föräldrarna om bestämmelserna om rättsligt bistånd och rättshjälp, exempelvis genom att ge dem en förteckning över tvåspråkiga specialiserade advokater och erbjuda tolkningsmöjligheter för att man ska kunna undvika fall där föräldrarna ger sitt samtycke utan att de till fullo inser konsekvenserna av sina åtaganden. Utskottet rekommenderar också att tillräckligt stöd tillhandahålls föräldrar med läs- och skrivsvårigheter.

7. Utskottet betonar vikten av lämpliga politiska åtgärder för att undvika vårdnadsförfaranden genom tillsyn och system för tidiga varningar samt tillhandahållandet av lämpligt stöd till familjer.

8. Utskottet uppmanar med kraft kommissionen att på ett effektivt sätt övervaka genomförandet av bestämmelserna i förordning (EU) nr 1393/2007 om delgivning i medlemsstaterna av rättegångshandlingar och andra handlingar i mål och ärenden av civil eller kommersiell natur ("delgivning av handlingar") i syfte att på ett korrekt sätt ta itu med alla kränkningar, inbegripet de med anknytning till kostnader för tjänster och översättning av handlingar.

9. Utskottet understryker vikten av ett nära samarbete och effektiv kommunikation mellan de olika nationella och lokala myndigheterna som ansvarar för barnavårdsförfaranden, från socialtjänsten till tillsynsmyndigheten och de centrala myndigheterna, och betonar i detta avseende den slovakiska centrala myndighetens framgång i sina direkta förhandlingar och undertecknande av bilaterala överenskommelser med de lokala myndigheterna, kallat samförståndsavtalet, i Förenade kungariket.

10. Utskottet är övertygat om att statistiska uppgifter bör samlas in och göras offentligt tillgängliga på nationell, regional och lokal nivå i alla medlemsstater, med särskilt fokus på det totala antalet anställda som är verksamma i socialtjänstens kontor, antalet barn som årligen är föremål för de relevanta myndigheternas beslut och resultaten av familjetvister som inbegripet barn till par med två nationaliteter och andra ärenden med anknytning till vårdnad av barn, såsom adoption eller placering i fosterhem utan föräldrarnas samtycke, inbegripet utländska föräldrar. Utskottet föreslår att denna statistik även bör finnas tillgänglig uppdelad, baserat på olika socioekonomiska och demografiska variabler, med grund i familjernas inkomstnivåer.

11. Utskottet uppmanar medlemsstaterna att införa system för övervakning och utvärdering (med relevant uppdelning enligt socioekonomisk statistik och nationalitet) inom en nationell ram för samordning av gränsöverskridande fall där barn är inblandade. Utskottet rekommenderar att kommissionen samordnar överföringen av uppgifter mellan de relevanta myndigheterna i medlemsstaterna.

12. Utskottet påminner de tyska myndigheterna om rekommendationerna i det arbetsdokument om undersökningsresan till Berlin som antogs av utskottet den 16 juli 2012.

13. Utskottet betonar vikten av barnets rätt att höras, som föreskrivs i artikel 24 i Europeiska unionens stadga om de grundläggande rättigheterna. Utskottet erinrar om att domstolar, i enlighet med artikel 23 i Bryssel IIa-förordningen, kan vägra att erkänna eller verkställa ett avgörande som utfärdats av en domstol i en annan medlemsstat med anknytning till föräldraansvar om barnet inte har givits möjlighet att höras. Utskottet betonar att utfrågningen av barnet i ett familjeförfarande ska spelas in. Utskottet rekommenderar att utfrågningen sker separat från föräldrarna för att undvika att barnet påverkas och upplever en lojalitetskonflikt.

14. Utskottet erinrar de danska myndigheterna om rekommendationerna i det arbetsdokument om undersökningsresan till Danmark som antogs av utskottet den 22 oktober 2013.

15. Utskottet uppmanar medlemsstaterna att inrätta specialiserade avdelningar inom familjedomstolar eller organ för gränsöverskridande medling, för att handlägga förfaranden i gränsöverskridande mål som avser barn. Utskottet understryker att vederbörlig övervakning av situationen efter en dom är avgörande, även när det gäller kontakt med föräldrarna.

16. Utskottet uppmanar de danska myndigheterna att vederbörligen beakta rekommendationerna från kommittén för avskaffande av diskriminering av kvinnor i dess meddelande nr 46/2012, som publicerades i mars 2016, samt hänvisningen till de relevanta artiklarna i Istanbulkonventionen.

17. Utskottet påminner om den enorma mängd framställningar som mottagits rörande det tyska Jugendamt-systemet som ingivits av utländska föräldrar som klagar över att de diskrimineras systematiskt i beslut som antagits inom ramen för familjetvister som inbegripet barn till par med två nationaliteter. Utskottet uppmanar alla tyska relevanta myndigheter att erbjuda fullt samarbete på EU-nivå för att tydliggöra hela situationen, med början i att tillhandahålla alla användbara uppgifter och all användbar information i frågan, och att vidta resoluta åtgärder i deras administrationer för att korrigera fastställda brister på detta område.

18. Utskottet påminner om rekommendationerna i det arbetsdokument som antogs av utskottet om undersökningsresan till London.

19. Utskottet beklagar djupt den negativa inverkan på nationella socialtjänster som härrör från budgetnedskärningar till följd av åtstramningsåtgärder som antagits på EU- och medlemsstatsnivå, vilket bland annat medför en ökad genomsnittlig arbetsbelastning för alla socialarbetare vad gäller antalet barnrelaterade ärenden. Utskottet påpekar att hela processen i barnrelaterade ärenden, som socialt sett är extremt känsliga, måste vara fria från privata finansiella intressen av alla slag, och att placeringsorgan därför bör vara offentliga. Utskottet anser, med tanke på de allvarliga socioekonomiska konsekvenserna av sådana beslut (även för

samhället som helhet, när siffrorna läggs ihop), att ett förebyggande tillvägagångssätt som inbegriper system för tidig övervakning med varning och tillräckligt med preliminära åtgärder i fråga om förlorad vårdnad spelar en avgörande roll och bör inrättas utan dröjsmål av de behöriga myndigheterna. Utskottet uppmanar de berörda nationella myndigheterna att tillhandahålla mekanismer för lämpligt socialt stöd, särskilt till sämre gynnade familjer eller sådana som riskerar utestängning, i syfte att förhindra även en slutgiltig form av socioekonomisk diskriminering.

20. Utskottet välkomnar den omarbetning av rådets förordning (EG) nr 2201/2003 av den 27 november 2003 om behörighet, erkännande och verkställighet av domar i äktenskapsmål och mål om föräldraansvar som framlagts av kommissionen och hoppas att parlamentets förslag kommer att beaktas vederbörligen av rådet.

21. Utskottet uppmanar medlemsstaterna att förbättra kvaliteten på de sociala tjänsterna samt EU att anta riktade stödåtgärder i syfte att säkerställa möjligheten att genomföra en korrekt bedömning av enskilda ärenden med anknytning till barns välbefinnande, och säkerställa att dessa är helt fria från politiska och finansiella påtryckningar. Utskottet betonar behovet av att komma bort från att sådana beslut påverkas av budgetbegränsningar eller eventuellt rättsligt ansvar med anknytning till vissa val (och inte andra), vilket (avsiktligen eller oavsiktligen) kan leda till partiska beslut. Utskottet uppmuntrar till inledande av offentliga kampanjer som baseras på konkreta fakta och siffror som kan utgöra en motvikt till den uppfattning som vissa sensationslystna medier skapat på grundval av enskilda ärenden.

22. Utskottet uppmanar medlemsstaterna att överväga att erbjuda gratis och tillgänglig rättshjälp i ärenden som rör adoption, vårdnad eller förmyndarskap samt nationella och/eller gränsöverskridande ärenden till familjer med låg eller ingen inkomst och till människor som riskerar att drabbas av fattigdom eller att hamna under fattigdomsgränsen.

23. Utskottet anser att standardiserade förfaranden, inklusive konkreta protokoll, med riktlinjer och resultattavlor för att minimera subjektivitetsrisken, samt effektiv utbildning och en strategi för livslångt lärande för alla nationella socialarbetare är oerhört viktigt för gränsöverskridande familjetvister där ett barn inbegrips.

24. Utskottet uppmanar till att minimistandarder för regler som rör utfrågningar av barn i medlemsstaterna fastställs.

25. Utskottet rekommenderar att trösklarna för längden på varje steg i gränsöverskridande barnavårdsförfaranden fastställs så att barnets mer avlägsna släktingar får tillräckligt med tid att anmäla sitt intresse och lämna in en ansökan om att adoptera barnet, eller så att föräldrarna kan ta itu med sina problem och föreslå hållbara alternativ innan det slutliga adoptionsbeslutet fattas. Utskottet anser att innan en permanent lösning, såsom adoption, fastställs, måste en ordentlig ny bedömning av situationen för den biologiska familjen genomföras.

26. Utskottet riktar återigen uppmärksamhet mot publikationen *Ten Principles on integrated child protection systems*, som kommissionen offentliggjorde vid det åttonde europeiska forumet om barns rättigheter, och anser att dessa principer bör utgöra den grundläggande kärnan vid alla slags förfaranden som gäller skydd av barn.

27. Utskottet betonar att mekanismer måste upprättas, för att respektera den kulturella mångfalden och skydda det enskilda arvet, så att lämplig kontakt mellan förälder och barn

garanterat sker på deras gemensamma språk. Utskottet betonar att placeringen, närhelst en sådan bedöms vara oundvikligt och efter något sorts foster- eller adoptionsarrangemang, bör erbjuda de berörda barnen de bästa möjligheterna att bevara barnets kulturella bakgrund och att lära sig och använda modersmålet. Utskottet anser, som en mycket viktig inledande åtgärd, att de myndigheter i medlemsstaterna som är inblandade i barnavårdsförfaranden ombes vidta alla tänkbara åtgärder för att undvika att syskon separeras.

28. Utskottet uppmärksammar de allmänna kommentarerna 13 och 14 till konventionen om barnets rättigheter, barnets rätt till frihet från alla former av våld samt barnets rätt att få sitt bästa satt i främsta rummet, samt stöder bestämmelserna i den resolution som antogs av Förenta nationernas generalförsamling den 24 februari 2010 (A/RES/64/142), dvs. FN:s riktlinjer för alternativ omvårdnad av barn.

29. Utskottet efterlyser ett effektivare bilateralt samarbete mellan medlemsstaterna och deras rättssystem för att öka medborgarnas och myndigheternas förståelse av olika nationella lagstiftningar. Utskottet anser dessutom i detta avseende att verksamheter rörande information, kommunikation, vägledning och rådgivning bör förbättras för att öka medvetenheten och tillhandahålla bästa stöd till medborgare och myndigheter.

30. Utskottet välkomnar anordnandet av en undersökningsresa till Spanien den 22–23 maj i syfte att bidra till att lösa ärenden med bortföranden av spädbarn och barn och uppmanar till skapandet av tillgängliga offentliga DNA-banker – inbegripet kostnadsfri provtagning och kostnadsfria tester som krävs för de berörda familjerna – och av en Europaomfattande tillgänglig databas där nödvändiga resurser finns att tillgå, bland andra åtgärder inom ramen för det polisiära och rättsliga samarbetet i dessa frågor på EU-nivå.

31. Utskottet uppmanar alla deltagande institutioner att på allvar beakta dessa rekommendationer och överväga hur de ska genomföras på ett effektivt sätt, särskilt avseende medlemsstater när det gäller att i detta avseende förbättra deras rättsliga och administrativa system. Utskottet uppmanar kommissionen att inbegripa dessa beaktanden när så är möjligt inom ramen för översynen av Bryssel IIa-förordningen.

32. Utskottet rekommenderar att framställningarna rörande Jugendamt som förklarats tillåtliga vidarebefordras till det förbundsministeriet för familj, äldre, kvinnor och ungdomar för kännedom, i enlighet med avtalet mellan minister Schroeder och kommissionär Reding.

33. Utskottet är starkt övertygat om att EU noggrannare bör övervaka och kontrollera förfaranden och konkret praxis avseende familjerättsliga frågor med gränsöverskridande konsekvenser som antagits av medlemsstaternas behöriga myndigheter och som påverkar beslut avseende föräldraansvar, besöksrätt och underhållsskyldigheter i syfte att säkerställa att sådana förfaranden och sådan praxis inte är diskriminerande, och på så vis skyddar alla relaterade grundläggande rättigheter.

34. Utskottet uppmanar medlemsstaterna att tillhandahålla en förteckning över stödstrukturer till utländska föräldrar som befinner sig i en situation där deras föräldrarättigheter eventuellt tas ifrån dem.

35. Utskottet anser att de spanska myndigheterna fullt ut bör genomföra rekommendationerna från FN:s arbetsgrupp för frågor som rör påtvingade eller ofrivilliga försvinnanden med avseende på ärendena med ”stulna spädbarn”, och bör tillhandahålla det

bästa samarbetet med och det mest effektiva stödet till de medborgare som anmält fall rörande barns försvinnande i syfte att uppnå full insyn.

36. Utskottet uppmanar kommissionen att samarbeta nära med medlemsstaterna i deras ansträngningar att ge stöd åt ensamkommande barn med alla medel. Utskottet uppmanar även nationella och internationella berörda parter och i synnerhet icke-statliga organisationer som tar emot EU-medel för att erbjuda särskild hjälp till dessa barn att vidta åtgärder där det är nödvändigt i samarbete med de nationella myndigheterna i det land där de är verksamma och under myndigheternas vägledning för att ge ensamkommande barn de bästa möjliga mottagningsförhållandena enligt de nödvändiga standarderna. Utskottet anser att kommissionen även bör be medlemsstaterna att inkludera ensamkommande barn i sina omplaceringsprogram samt göra denna fråga till en prioritering.

37. Utskottet rekommenderar att familjestödscentraler upprättas i medlemsstaterna som ska erbjuda heltäckande rådgivning från internationella och tvärvetenskapliga grupper av jurister, socialarbetare, medlare och psykologer för mobila EU-familjer som kräver stöd vid sitt samarbete med socialtjänsten. Utskottet uppmanar kommissionen att finansiera icke-statliga organisationer som erbjuder praktiskt stöd till mobila familjer som utnyttjar sina rättigheter som de erhållit genom medborgarskap i EU.

38. Utskottet rekommenderar att alla framställningar hålls öppna vilkas relaterade frågor behöver förtydligas ytterligare och uppmanar i detta avseende kommissionen och medlemsstaterna att intensifiera sina ansträngningar för att göra det möjligt att hantera alla problem som stötts på ett mer effektivt sätt och därmed lösas permanent.

Verksamheten vid arbetsgruppen för frågor om barns välfärd Minoritetsyttrande från ELP och ALDE

Familjen är en grundläggande institution och den viktigaste omgivningen när det gäller barns uppväxt och välbefinnande. Att skydda barnens bästa såväl som deras rätt till familjeliv, i synnerhet med tanke på EU-medborgarnas fria rörlighet, prioriteras av både EPP- och ALDE-gruppen.

Även om familjelagstiftningen faller under medlemsstaternas nationella behörighet måste socialnämnder och domstolar, såväl som alla andra behöriga offentliga organ, sätta barnets bästa i centrum vid alla beslut som de fattar eller åtgärder som de vidtar.

I enlighet med Europaparlamentets resolution om att skydda barnets bästa i hela EU utgående från framställningar bör EU:s institutioner och medlemsstaterna främja gränsöverskridande samarbete i familje frågor och tillhandahålla utbildningar för domare och yrkesverksamma, information om rättshjälp samt tvåspråkiga jurister. Ambassader och konsulära företrädare ska vara informerade redan från början av alla barnavårdsförfaranden som rör deras medborgare.

Slutligen ger EPP och ALDE sitt starka stöd till att utskottet för framställningar respekterar rätten att ens fråga behandlas opartiskt, rättvist och inom en rimlig tidsperiod¹. Vi beklagar dock att arbetsgruppen dröjde med att behandla dessa framställningar och inte drog några slutsatser efter utfrågningarna av alla de berörda parter med sakkunskap som var inblandade, och att de i huvudsak fokuserade på föräldrarnas rättigheter snarare än barnets välbefinnande.

¹ Artikel 24 i stadgan om de grundläggande rättigheterna.

SLUTLIG OMRÖSTNING MED NAMNUPPROP I UTSKOTTET

17	+
ECR	Krupa Urszula
EFDD	Eleonora Evi, D'Amato Rosa
ENF	Laurențiu Rebeca,
GUE/NGL	Albiol Guzmán, Kuneva Kostadinka, Ángela Vallina,
S&D	Cabezón Ruiz Soledad, Cozzolino Andrea, Geringer de Oedenberg Lidia Joanna, Martin Edouard, Mizzi Marlene, Moisă Sorin, Rozière Virginie,
VERTS/ALE	Margrete Auken, Šoltés Igor, Tatjana Ždanoka

13	-
ALDE	Cecilia Wikström, Toom Yana
ECR	Hannan Daniel
PPE	Becker Heinz K., Csáky Pál, Estaràs Ferragut Rosa, Jahr Peter, Roberta Metsola, Pitera Julia, Preda Cristian Dan, Wałęsa Jarosław, Wieland Rainer
S&D	Preuß Gabriele

	0

Förklaring av symboler:

+ : Ja-röster

- : Nej-röster

0 : Nedlagda röster

Annex 1

Abstracts of the Debate following the oral questions on “protecting the best interest of the child in Europe.

Jeanine Hennis-Plasschaert, President-in-Office of the Council. – Mr President, Madam Commissioner, honourable Members, many thanks to Cecilia Wikström for the very kind words. I would like to recall the importance the Presidency attaches to the work on civil law, in particular on family matters and e-Justice solutions, and I take this opportunity to thank the Chairs of the Committee on Legal Affairs and the Committee on Petitions, Svoboda Pavel, and of course my former colleague Cecilia Wikström. I thank them for coming with these questions and ideas to complement the EU message already in place to protect the best interests of the child in cross-border situations.

On adoption: as you know the issue of adoption of children is a matter which is not regulated at EU level but by national laws and by some international conventions, particularly the Hague Convention of 1993, to which all EU Member States are parties. This Convention aims at protecting adopted children in their countries, if possible by offering them a home in those countries. It provides for cooperation between the authorities of the different States. **The Council may adopt measures concerning family law with cross-border implications following Article 81.3 of the Treaty, including in the field of adoption – but only on the basis of a proposal from the Commission.**

On welfare and child poverty: concerning the issue of the welfare of children, I would like to say a few words on the fight against poverty, which is a complex reality affecting many children unfortunately. The fight against poverty is one of the objectives of the Europe 2020 strategy and it is also one of the Presidency's priorities. Working closely with the Social Protection Committee, the Presidency has therefore tabled Council Conclusions on an integrated approach for combating poverty and social inclusion. In this document, which is to be adopted in June, the Council encourages Member States to address child poverty and promote children's wellbeing through integrated strategies in accordance with **the Commission recommendation 'Investing in children'. The Council also invites Member States to intensify the exchange of knowledge, experiences and best practices in this field.** Let me mention in particular the Roma children because, yes, we must also continue to address other longstanding challenges in addition to the situation faced by Roma children, and I thank the European Parliament for keeping this issue on the EU agenda, including on International Roma Day earlier this month, on 8 April to be precise.

As regards mediation, the EU has put in place **the 2008 Mediation Directive**, which aims at facilitating access to alternative dispute resolution. It promotes the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings. Moreover, the Brussels IIa Regulation foresees mediation as one of the functions of cooperation between central authorities in matters of parental responsibility. There is common understanding in Council that the revision of Brussels IIa is a topic of great importance and, to be honest, it is about time.

On e-Justice, on improving access to information in the justice field: you know that the e-Justice Portal was launched in 2010 in collaboration with the Commission and the Member States. The **Council's Second Action Plan on e-Justice** stresses that information relating to minors should be included in the e-Justice Portal. **A specific expert group is now examining the ways to expand information on minors already available on the Portal,** and your

specific question relating to adoption procedures could indeed be considered in this context.

In closing, I wish to say that the Council awaits with great interest the Commission proposal amending the Brussels IIa Regulation, as this is the cornerstone of EU judicial cooperation in matrimonial matters and matters of parental responsibility.

Věra Jourová, Member of the Commission. – Mr President, I would like to thank the Committee on Legal Affairs (JURI) and the Committee on Petitions (PETI) for organising this debate which I very much welcome. As has been said several times already, the Brussels IIa Regulation is an extremely important piece of legislation for many families in Europe. It has been applied for ten years and has proved to be very useful, but the time has come to review it. The Commission intends to come forward with a proposal late June this year. Our assessment is that the Brussels IIa Regulation works overall well with regard to matrimonial matters. We do not envisage, at this stage, the need to revise it in this respect. On the other hand, there is clear evidence for the urgent need to revise the regulation as regards parental responsibility aspects. Parliament, better than anyone, is aware of numerous cross-border cases in which the judicial cooperation based on this regulation is not fast enough, to say the least. Children end up being hostage of lengthy legal disputes. The mechanisms put in place by the Brussels IIa Regulation have helped in determining parental responsibility or settling child abduction cases, but we have to take additional steps.

I intend to **further clarify the rules on parental responsibility, to improve the enforcement of judicial decisions, to speed up the procedures and make sure that the best interests of the child are of primary consideration and effectively protected.** More concretely we are considering measures on the following aspects. Firstly, **to speed up the return procedure.** There are still far too many child abduction cases in which parents with an enforceable return order are stuck in lengthy proceedings. Abducted children must be returned swiftly as passing of time can have irreversible consequences for the relationship with their parents. Evidence shows that in those Member States with specialised courts the return procedure can be much smoother and quicker.

Secondly, to see whether the existing exequatur procedure is still needed and **to define the grounds for refusal of the enforcement of judgements.** It is unacceptable that currently a parent can be left without any possibility to see his or her child for years due to delays in the enforcement of judgments.

Thirdly, **to increase judicial cooperation and mutual trust between Member States,** for example when it comes to the specificity of family proceedings.

Fourthly, **to smoothen the differences in national rules governing the hearing of the child.** Too often these rules are invoked to refuse a judgement from another Member State. I am convinced that while acknowledging different legal traditions we can – and must – do better to respect the child's right to be heard. Finally, to improve the cooperation between national authorities with responsibility for child protection or parental responsibility matters. We need a strong network of these authorities to help parents in enforcing their parental rights abroad.

Besides these key changes to the Brussels IIa Regulation, we will also continue our **awareness raising activities, targeting also child welfare and consular authorities.** This is duly reflected in our **funding priorities and calls for proposals.**

To conclude, let me refer to the aspects related to adoptions. The Brussels IIa Regulation does not cover these aspects. The functioning of child protection and welfare services is governed by national law. The Commission has thoroughly examined the numerous petitions concerning adoptions without parental consent that you have recently received. None of them

fall into the remit of EU law. However, **the Commission is contributing to the elaboration of a common understanding of how the rights of the child can best be protected and promoted**. For instance, let me point to **the Ten Principles on integrated child protection systems**, which were debated in the last European Forum on the Rights of the Child and which are also mentioned in your draft resolution.

We will continue to support Member States in implementing a child rights—based approach and I know that you also, through dialogue and awareness raising, can have a real impact on improving the situation on this very important matter. I am looking forward to our close cooperation on these files, in the best interest of children and for the benefit of families in Europe.

Annex 2

Petitions related to Denmark:

A. list of petitions,

B: intervention of Ms Pia Deleuran,

C. working document on the FFV, see link:

<http://www.europarl.europa.eu/committees/en/peti/working-documents.html>

Annex 2A

Number	TitleA		Language	Con. Countries
0954-12	by V. A. (Italian), on alleged treatment in violation of human rights by the Danish authorities		English	Denmark,
0963-12	by M. K. D. A.-A. (Filipino), on her unsustainable situation in Denmark		English	Denmark,
0964-12	by F. I. (Italian), on lack of contact with his daughter living in Denmark		Italian	Denmark,
0965-12	by A. K. (Polish), on alleged medical negligence in connection with the treatment of her daughter and her problems with the child's Danish father		Polish	Denmark,
1078-12	by M. W.r (Austrian), on the dispute over her child's abduction and on the enforcement of the Hague Agreement by Denmark		German	Denmark, Austria,
1891-12	by O. J. (Russian) concerning human rights infringements by the Danish authorities		English	Denmark,
1945-12	by A. N. (Danish), on a violation of her human rights and those of her children		English	Denmark,
0107-13	by H. A. (Icelandic), on violations of the human rights of non-Danish parents in custody and abduction cases in Denmark		English	Denmark,
0108-13	by S. C. W. (Danish), on violations of the human rights of non-Danish parents in custody and abduction cases in Denmark		English	Denmark,
0939-13	by K. M. (US), on a custody dispute in Denmark		English	Denmark,
0944-13	by B. T. (Danish), on shared custody in Austria and Denmark		Danish	Denmark,
1036-13	by H. B. M. (Danish) concerning her struggle to protect her child against her violent ex-partner		Danish	Denmark,

1234-13	by M. M. (Danish) on an alleged breach of human rights, including children's rights, in Denmark		Danish	Denmark,
1235-13	by M. E. L. (Danish) on action by the Danish authorities with regard to her family and her child		Danish	Denmark,
1398-13	by A.R. (Danish) on human rights violations against her children and herself		English	Denmark,
1547-13	by L. E. (Danish) on human rights violations on her and her children in Denmark		English	Denmark,
1564-13	by B. S. W. (Danish) on violations of children's rights, parents' rights, mothers' rights and human rights in Denmark		English	Denmark,
1630-13	by B. H. (Danish) on violence against her child		Danish	Denmark,
1656-13	by K. H. (Danish) on the right of her child being heard and protected under the UN Convention on the rights of the child		English	Denmark,
1797-13	by C. V. (Danish) on violations of the UN Convention on the rights of the child and other human rights conventions in Denmark		Danish	Denmark,
1802-13	by S. L. (Danish), on protecting her daughter		English	Denmark,
1940-13	by T. D. (Danish) on the way in which the Danish authorities deal with custody cases		Danish	Denmark,
1955-13	by L.L.T. (Danish) on removal of her three children		Danish	Denmark,
2127-13	by B. S. W. (Danish) on violations of children's rights, parents' rights, mothers' rights and human rights in Denmark		Danish	Denmark,
2166-13	by M. O. (Honduras) on alleged discrimination and persecution in Denmark		Spanish	Denmark,
2296-13	by B.S.W. (Danish), on discrimination practised by the welfare officers, child psychologists, city council and courts of law in Denmark		English	Denmark,
2636-13	by T. R. A. (Danish) on the actions of the youth care authorities in Denmark		English	Denmark,
2790-13	by B. H. (Danish), on the Danish authorities' infringement of a child's rights.		Danish	Denmark,
1140-14	by H. J. (Danish), on the rights of children in Denmark and Sweden.		Danish	Denmark, Sweden,
2434-14	by R. H.-C. (Swedish), on behalf of the Nordic Committee for Human Rights (NKMR) on a report on child custody in Denmark, Finland, Norway and Sweden		English	Denmark, Sweden, Norway, Finland,

Annex 2 B

PETI Working group on Child Welfare Issues **Meeting on petitions against the Danish child custody proceedings**

Contribution of Pia Deleuran, Danish lawyer and mediator.

Mrs Deleuran concentrated on the main shortcomings of the Danish Act on Parental Responsibility (Forældreansvarsloven 2007), revised in 2012 and accompanied by the so called “Divorce-packages 1”, entered into force in October 2015, which contains a regulation on the birth parents obligations in case of conflict related to their children.

The Danish line focuses on getting the parents to negotiate an agreement about their children custody and the visitation right when their relationship or marriage breaks up (even if the parents have never lived together if the child is a product of a donor or a criminal act). It is aimed to support both parents in a mediation process and to offer more equality between mothers and fathers.

Before this agreement a first round of mediation is supposed to establish the interim visitation rights. This right of visitation is aimed at enabling the child to have contact with both parents and is decided without a full investigation about the problems and the cause of the conflict between the parents.

Regarding custody the law has set up share custody as a ground rule (even for breast-feed babies).

The original aim of this legislation was to help people getting into a dialogue and to set a future oriented system. The use of mediation within the administrative body called State Administration (Statsforvaltningen) to deal with custody, the set-up of the habitual residence of the child and the visitation rights is mandatory. This system is called “one-entrance”. All cases in family matters are dealt with in this institution as a first step.

The concept of the best interests of child has been redefined as a single issue: being in contact with both parents. The law focuses on the future with no holistic approach of the history of the family and the global well-being of the child. Pia Deleuran considers that the system does not offer a sufficient protection to a child confronted to an abusive parent and insists too much on the right of the child to be in contact with both parents (this focus is mentioned in the instructions to the social workers involved as child experts in a mediation/negotiation procedure). She mentioned a case she has to deal with where the State Administration, in its own initiative, tried to establish contact between a child and one of the parents who has not shown any interest in visitation and has been accused of being violent towards the child.

Pia Deleuran particularly insists on the following issues:

– the mediation and the following decisions are undertaken without any screening of the whole situation and the history of the family. Therefore there might be cases of domestic violence where the victim is forced to face and deal with the aggressor. She adds that the system sometimes leads to cases of child abduction by the parent who has been victim of violence or tries to protect the child from abuse or violence and does not want to be

confronted to the author of these mistreatments outside of a court. It seems that no consideration is given to the possible consequences of the violence against the mother on the well-being of the child. This is in breach with the Istanbul Convention, ratified by Denmark, which states in its article 31.1 that “Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account” and in its Article 48.1 that “Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.”

– the new regulation is long and detailed but there no legal aid available as long as the case is in front of the administrative body.

– In case of disagreement after the mediation phase, only custody cases and residence questions can be sent to court. Sending the case to court is done by the State Administration and not by the lawyers. This has as a consequence that some cases do not get access to the court system. Visitation arrangements can never be dealt in front of a court. It must also be noted that when the cases are dealt with in the State Administration parents do not speak under oath, as in court settings.

– Visitation can only be refused if it is proved that the contact with a parent is the cause of the child's troubles/suffering. However, since there is no possibility to have witnesses involved in the proceedings, it is very difficult for the other parent to prove an abusive or violent situation. According to Pia Deleuran it could be considered as a breach to the right for a fair trial.

If a parent refuses to negotiate it can be seen as lack of parental skills and ability and sanctioned so that the custody and the residence of the baby, toddler or child is given to the other parent – even though that parent is unknown to the child and has no emotional bond with him/her.

Pia Deleuran considers that the offer of free mediation is a very good instrument in family matters but it has to be voluntary. She adds that the counselling and advice from a child expert is helpful to many families who are in a break up situation. In some cases judicial proceedings in front a court are necessary and parents should have access to judicial proceedings when needed.

No member of the Danish Parliament had voted against these legal instruments and there was no opposition manifested among lawyers or child-experts. The Danish Ombudsman when seized about this sever problems in the State Administration replied that this legislation needed time to be efficiently implemented. However, data show that there is an increasing number of cases where parents are in highly conflictual situations about the child custody and visitation rights.

Pia Deleuran considers that situations of domestic violence and abuses have been underestimated by the legislator and the public services. The official webpages do not provide information on these issues and translation in other languages than Danish can hardly be found.

Pia Deleuran also quoted the communication n° 46/2012 published in March 2016 where the CEDAW recommends to Denmark to:

"ii) Review and amend the Act on Parental Responsibility so as to ensure that (a) the requirement to consider the child's best interests as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere, is reflected both as a substantive right and as a rule of procedure, and (b) that the "best interests of the child" principle apply to all administrative and judicial proceedings, whether staffed by professional judges or lay persons or other officials in all procedures concerning children, including conciliation, mediation and arbitration processes;

iii) Develop legal principles which fully respect the rule of law, and ensure that the justice system provides for a robust and effective appellate system in order to correct both legal and factual errors, especially in custody cases and the determination and assessment of the principle of the best interests of the child;

iv) Conduct a comprehensive review based on research of Danish custody law and the Act on Parental Responsibility, in particular assessing its impact on foreign parents, especially foreign mothers;

v) Combat all negative attitudes and stereotypes which foster intersecting forms of discrimination against women, especially mothers of foreign nationality and ensure the full realization of the rights of their children to have their best interests assessed and taken as a primary consideration in all decisions;

vi) Design specialized and mandatory training programmes for judges , prosecutors and lawyers as well as other professionals involved in administrative and judicial proceedings on the dynamics of violence against women, custody and visitation rights and the "best interests of the child" principle, non-discrimination against foreign nationals as well as gender stereotypes in order to equip them with the necessary knowledge and skills to discharge their duties in conformity with the State party's international obligations. In accordance with article 7 (4), the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them translated into Danish and widely disseminated in order to reach all relevant sectors of society."

Pia Deleuran concluded by reminding that this system was originally envisaged as an experiment and that in view of the results it should be reviewed in order to ensure a better protection of children's rights and equal legal guarantees for both parents in front of a court when necessary.

She finally informed the members that GREVIO, the monitoring instrument mentioned in The Istanbul Convention, will be contacted and informed about the situation so that an investigation can be launched on the situation in Denmark regarding the necessary protection of children.

Annex 3

Petitions related to UK:

A. List of petitions;

B. Study on non-consensual adoptions in UK, see link:

(http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU%282015%29519236_EN.pdf)

C. Working document on the FFV, see link:

<http://www.europarl.europa.eu/cmsdata/110842/1092729EN.pdf>;

D. Intervention of Ms. Andrea Cisarova, Director of the CIPS in Slovakia

Annex 3A

Number	Title	Language	Con. Countries
1847-13	by E. L.-S. (Dutch), on religious and ethnic discrimination against a child by the British authorities	English	United Kingdom,
2468-13	by R. F. (British), on the practice of forced adoptions in the United Kingdom.	English	United Kingdom,
2546-13	by A. B. (Lithuanian), on her son, who has been taken into care	English	United Kingdom, Lithuania,
0063-14	by J. I. (Lithuanian), on behalf of her daughter, on child welfare in the UK	Lithuanian	United Kingdom, Lithuania,
0344-14	by M. P. (Bulgarian), on the supposed violation by the British authorities of the fundamental rights of a Bulgarian family relating to the custody rights over a minor	English	Bulgaria, United Kingdom,
0448-14	by V. S. (Bulgarian) on the return of her daughter to the biological mother	English	Bulgaria, United Kingdom,
1638-14	by S. G. (Latvian) on the role of social services in children-related cases, in the UK	English	Latvia, United Kingdom,
0195-15	by M. E. (French) on the taking of her children by British social services	French	United Kingdom,
0764-15	by I. F. (Estonian) on the forced adoption of a new-born Estonian national in the UK	English	Estonia, United Kingdom,
1392-14	by C. K.-B. (German), on the return of her children to Germany	German	Germany, United Kingdom,
2813-13	by M. B.-H. (British) on the decisions made by the UK social services regarding her son	English	United Kingdom,
2542-13	by D.S. (British), on Forced adoptions	English	United Kingdom,
2473-13	by A. A. (Lithuanian) on alleged discrimination by UK authorities on the grounds of ethnicity, religion and language and violation of the European Convention on Human Rights	English	United Kingdom,
2498-13	by B. G. (United Kingdom), on the removal of her children by social services	Polish	United Kingdom,

2287-13	by A. A. (Lithuanian), on alleged discrimination by UK authorities on the grounds of ethnicity, religion and language and violation of the European Convention on Human Rights	English	United Kingdom,
1707-13	by S. K. M. (German), on behalf of Association of McKenzie Friends, on Abolition of Adoptions without Parental Confirm (forced adoption) over 2500 supporters.	English	United Kingdom,
0030-16	by K.C. (British) on litigation with the social authorities in Nottingham, UK	English	United Kingdom,

Intervention of Mrs Andrea Cisarova, Director of the CIPS, Slovakian Centre for International Legal Protection of Children, Central Authority for Slovakia.

The Centre is entitled to request information from competent local social authorities on a minor who is a citizen of the Slovak Republic or one of whose parents is a citizen of the Slovak Republic and who is subject to measures related to the removal of a child and its placement in a substitute care. The social authorities are entitled to contact the Centre directly regarding a child who is subject to measures connected with the removal of a child and its placement in a substitute care. The social authorities shall provide the Centre with information on the minor and its parents (name, surname, date of birth, last known address in the Slovak Republic) and detailed particulars of the case (in particular, the reason why is the child subject to social or legal protection and details of planned procedure in the case). Centre proceeds under Council Regulation (EC) No 2201/2003 in order to obtain assessment on social conditions of relatives of child, who could possibly take care of the child. To obtain this information it is necessary to request the particular and certain authorities responsible for preparing the assessments.

Successfully solved cases- the case of the minor children Boor

One of the milestones in the life of the Centre was the case of the minor children Boor, in which the UK court allowed the Centre to join the ongoing court proceeding as a third party. Some facts about this case: In the case of the children Boor, where care and placement order as well a residence order were issued in respect of the minor children: Martin and Samuel, because Martin was examined at a hospital and had various bruises and scratches identified on his body. Mother has been unable to provide an explanation for the injuries. The Local Authority, Surrey County Council issued proceedings on 7th July 2010 and seeks Care Orders. On May 30, 2012 the final hearing took place before the competent court. The court entrusted the minors to the care of Surrey County Council. In the proceedings, the judge failed to consider the opinion of the Slovak psychologist concerning the ability of Mrs Študencová (grandmother) to take care of the children and relied exclusively on the opinion of the English psychologist and authorities. The court on 29th of May 2012 denied the grandmothers application and decided to place the children at foster family in the UK. On 13th of September 2012 the Centre submitted an intervention to the Civil Appeals Office, which on the 14th of September was accepted and allowed the Centre to be a third party in the proceedings. The children were at the end repatriated to Slovakia. It was a very important achievement, because from then the Centre is able to affect the court proceedings regarding the Slovak children removed from the care of their parents and it's able to help the applicants to get them back to their care or place them in the care of their relatives. After the Centre successfully solved the case of Boor children they started to prepare a) submissions, b) written statements and c) interventions in order to be able to influence the court proceedings in the UK. These documents are prepared by the director of the Centre and their aim is to represent the opinion of the Slovak social services and offer different solutions to the UK authorities. These different solutions could be: a) transfer of proceedings to the Slovak court, which is better placed to decide the case according to the art. 15 of the Council Regulation (EC) No 2201/2003 or b) entrust the child to the care of relatives living in Slovakia, who are able to take care of the child. The Centre always believes that the UK court will choose the best option and will decide in the best interest of the child.

Memorandum of understanding- activities of the Centre

One of the most important activities of the Centre is a process of negotiating and signing bilateral agreements between the local authorities of UK and the Centre as Central Authority of Slovak Republic. These agreements are called Memorandum of Understanding and their aim is to ensure the fast and smooth communication between the Slovak Central Authority and the local authorities of the UK in the cases involving minor Slovak citizens. These agreements are based on the Articles 55 and 56 of the Council Regulation (EC) No 2201/2003 (Brussels II a). Currently the Centre was able to establish cooperation with two local authorities from the UK. The first Memorandum of understanding was signed with Peterborough City Council on the 19th of November in 2015 in Peterborough. The main goal of this Memorandum of Understanding is to assist the Centre and Peterborough City Council in England to a) ensure cross border co-operation in children cases and to strengthen co-operation; b) gain an understanding of procedures in each jurisdiction and communicate information on national laws and procedures; c) establish practical arrangements for assessments and return of children. It is very important to inform immediately the Slovak Central Authority about the removal of the children, who are Slovak citizens from their parents care at the territory of the UK. In these cases it's not possible for the children to remain with their birth parents and or extended family and in most of the cases they are entrusted to the care of the local authorities and foster families.

The second Memorandum of Understanding was signed on the 23th of March 2016 with Derby City Council and its content is very similar to the first memorandum. The most important is the question of placement of the children (Slovak citizens) at the territory of the UK after their removal from their parents care and their repatriation to Slovak Republic. At the moment the Centre is negotiating with other local authorities from the territories where the most of the Slovak citizens are working and living in the UK. These local authorities are the following: Sheffield City Council, Manchester City Council, Newcastle City Council, Bradford City Council, Birmingham City Council, etc.

Annex 4

Petitions related to Germany (Jugendamt):

A. List of petitions;

B. Working document on the FFV to Berlin, see link:

(http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/dt/906/906407/906407en.pdf);

C. Interventions of: Ms Marinella Colombo, Italian journalist and author, Mr. Francesco Trapella, Italian lawyer, Maître Muriel Bodin, French lawyer;

D. Summary of the intervention of a Jugendamt representative in PETI Committee meeting;

E. Letter to the German authorities and reply.

Annex 4A

Number	Title		Language	Con. Countries
0128-07	by T. P. (German) on arbitrary measures taken by the German child and youth welfare office (Jugendamt)		German	
0760-11	by R. G. T. (Columbian), on abusive measures taken by the German Office for Children and Young People (Jugendamt)		Spanish	Germany,
1372-11	by M. G. (Polish), on behalf of the International Association against Discrimination against Children in Germany', on the ban on the use of Polish in connection with supervised contact (Jugendamt)		Polish	Germany,
0477-12	by M. K.S. (Polish) on her protest against the German youth welfare office (Jugendamt) and the German family courts' decisions		German	Germany,
0520-12	by I. M. (German), concerning the German youth welfare office (Jugendamt)		German	Germany,
0526-12	by H. S. (German), on the removal of her son from home (Jugendamt)		German	Germany,
0531-12	by M. A. S. (Italian), on the placement of her son with his grandmother (Jugendamt)		Spanish	Germany,
0560-12	by G. J. (German), on the neglect of children in care homes and children's homes and the responsibility of the German youth welfare office (Jugendamt)		German	Germany,
0979-12	by L. G. (French), on the Jugendamt in Germany, on its operating methods and the discriminatory nature of its administrative measures		French	France, Germany,

0984-12	by A. J. (French), on the respect of the rights of parents in Germany in relation to the operating methods of the Jugendamt institution		French	France, Germany,
1060-12	by L. G. (French), on alleged discrimination against foreign parents in Germany's law and by German courts with regard to parental authority over children born to spouses of different nationalities (Jugendamt)		French	Germany,
1278-12	by M. N. (German) concerning the Jugendamt (Youth Authority) and compliance with legal judgments under German family law		German	Germany,
1871-12	by A. H. (German) concerning the German Youth Office (Jugendamt) and recognition of judgments in the field of German family law		German	Germany,
1901-12	by P. F. (French) concerning the German Youth Office (Jugendamt)		French	Germany,
0049-13	by P. R. (French) on custody of his children (Jugendamt)		French	Germany,
0059-13	by M. M. (German), on the German Jugendamt (Youth Welfare Service)		German	Germany,
0460-13	by L. M. (Italian), on discrimination against foreign parents in Germany (Jugendamt)		Italian	Germany,
0515-13	by D. T. (Czech), on Jugendamt in Germany		Czech	Germany,
0624-13	by A. O. (Romanian) concerning the recognition of custody rulings in the European Union and compliance therewith (Jugendamt)		English	Germany,
0643-13	by E. O. (German) on the conduct of the Jugendamt in Darmstadt		German	Germany,
1784-13	by L. S. G. (French) on abuse of the EAW in the family matters and abandonment of family because of alleged non-payment of alimony or maintenance advances		French	France/Germany
2317-13	by L. R. (Croatian), on the taking into care of her son by the Jugendamt [Youth Office]		German	Germany,
2426-13	by L. P. (Italian) on the Jugendamt in Germany (Beistandschaft)		Italian	Germany
0007-14	by M. A. (Polish), on the actions of the Jugendamt Kleve (youth welfare office in Kleve, Germany)		German	Germany,

1158-14	by A. R. (German), and one co-signatory, on the German Youth Authority (Jugendamt)		German	Germany,
1720-14	by T. H. (German) on the right to visit her daughter		French	Germany, France,
0204-15	by B. M. P.-M. (Polish) on the German "Jugendamt" (Youth Office)		German	Germany,
0509-15	by P. T. (Italian) on the Jugendamt and breaches of the right to parenthood in Germany		Italian	Germany,
1220-15	by R. P.-I. (Italian) on the performance of the German Jugendamt		Italian	Germany,
1378-15	by R. P.-I. (Italian) on the performance of the German Youth Welfare Office ("Jugendamt")		Italian	Germany,
1425-15	by C.J. (French) on the non-recognition by the German administrative (Jugendamt) and judiciary authorities of a judgment made in France		French	Germany,
0459-16	by A. J. Petition contre le détournement et la distorsion du règlement européen 4/2009 et des conventions internationales, systématiquement mis en œuvre au sein des tribunaux de la famille en Allemagne		French	Germany,
1021-16	by K.B. (French) on the change of family name of binational children		French	Germany

Annex 4C

Interventions of: Mr. Francesco Trapella, Italian lawyer, Maître Muriel Bodin, French lawyer and Ms Marinella Colombo, Italian journalist and author.

THE DEFINITION OF EUROPEAN PUBLIC ORDER AS A USABILITY PARAMETER FOR EVIDENCE IN CRIMINAL PROCEDURES ON CRIMES IN THE FAMILIAL DOMAIN*

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1. EUROPEAN PUBLIC ORDER

To delineate the subject of this document, we must first define European public order. In 1995, in the *LOZIDOU* judgment, the European Court of Human Rights stated that the European Convention on Human Rights is an instrument of European public order¹. This notion therefore demonstrates the recovery of the universality of moral values, which was shattered when the principle of national sovereignty was confirmed by the construction of barriers of national autarky. The convention brought about public order in the area of

fundamental rights: it would be meaningless if its implementation was influenced by national particularisms² and it therefore cannot be interpreted in a different way in each Member State. Thus, as Caroline Picheral said, taking up Frédéric Sudre's definition, European public order is a 'functional legal category responsible for the democratic values and liberal economic values necessary for European integration'³.

When one talks about fundamental rights, one refers to "the rights which are actually declared and protected before a court", which are guaranteed by internal constitutional rights, the European Convention on Human Rights or the Charter of Fundamental Rights"⁴. European public order is also defined by EU law: the treaties and secondary law. Before the Treaty of Lisbon, the Court of Justice often relied on the European Convention on Human Rights, as it expresses a common tradition in European countries. Since the Nice Charter in 2000, the fundamental rights which it provides for can be invoked before a European judge: a Court of Justice judgment from 2006 appeared to add the Nice Charter to the sources of law in the Union. In 2009, the Treaty of Lisbon confirmed this. Lastly, the Court of Justice opinion 2/13 of 18 December 2014 stated that 'The agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms'. There are two systems for the protection of fundamental rights: on the one hand, the European Convention on Fundamental Rights and, on the other hand, the Nice Charter⁵.

Our brief overview has shown that there are two sources of European public order: the

¹ ECHR, 23 March 1995, *Lozidou c/ Turquie*, req. 15318/89, point 93.

² S. Lonati, *Metodi d'interpretazione della Corte edu e equoprocesso*, *Giur. cost.*, 2015, p. 253.

³ C. Picheral, *L'ordre public européen: Droit communautaire et droit européen des droits de l'homme*, La Documentation Française, 2001, p. 4.

⁴ S. Nadaud, *Codifier le droit civil européen*, Larcier, 2008, p. 111, which quotes J. Andriantsimbazovina, *Constitution européenne et droit fondamentaux*, www.upmf-grenoble.fr.

⁵ Before the Treaty of Lisbon, however, 'decisions by community courts which relied on the Charter of Fundamental Rights were rare and only related to the CFI': see S. Nadaud, *Codifier*, mentioned above, p. 112, note 550. Following the Treaty of Lisbon, in a judgment from 2013 (CJEU, 26 February 2013, *Åklagaren*, C-617/10), the Court of Justice highlighted the autonomy of the Nice Charter, therefore national judges should assess whether, in a specific case, EU law or ECHR can be applied: the court does not offer fixed criteria.

European Convention on Fundamental Rights and EU law¹, and of course the national constitutions.

2. THE RIGHT TO EDUCATION: NATIONAL LAWS, ECHR, ETC.

According to Frédéric Sudre, European public order comprises eight rights, one of which is that of ‘parents in respect of their convictions with regard to education’²: it follows that a parent’s right to educate their children according to their own will and that of their child to receive a full education comes from the concept of public order.

It is important to understand what the word ‘education’ means. In *THE REPUBLIC*, Plato said that ‘thanks to a good education, [citizens] will grow up (12) balanced men’. The word actually comes from the Latin: *EX-DUCO*, which means: to guide or draw out. Education is therefore the act of ‘taking the child out of his natural (13) state’ and ‘bringing out of him that which he possesses in potential’; in German the term is *ERZIEHEN*, formed from the verb ‘*ZIEHEN*’, which means ‘to pull’: Claude Bernard said that ‘*ERZIEHEN*’ indicates the conduct of those who ‘pull the child that resists... To educate is therefore to struggle: an unequal struggle between child and adult’³. On the basis of this reflection and of European law on the subject⁴, in Italy, the legislative decree of 28 December 2013, No 154 and the law of 18 June 2015, No 101⁵ replaced the word ‘*POTESTÀ*’ with ‘*RESPONSABILITÀ*’, thus the ‘responsibility of parents’ for their children: one no longer has only rights and powers over the other, but also obligations and (17) duties; under Italian law – and European regulations – education includes all the situations which link adults and children by having an effect on reciprocal rights and duties.

Article 2 of the first ECHR protocol talks about ‘the right to instruction’, but this should be understood as the ‘right to education’ and is therefore about the parents’ prerogative (18) for their children and the limitation of state action. On the basis of this consideration, in the 1993 *HOFFMAN* judgment⁶, the European Court of Human Rights stated that national judges cannot refuse to give custody of a child to its mother on the basis of her (20) religious or philosophical beliefs. In the 2003 *PALAU-MARTINEZ* judgment, the court stressed that national judges cannot take a child away from its mother on the basis of abstract considerations on her religious affiliations: in this case, the French judge argued that ‘the educational rules imposed by Jehovah’s Witnesses on the children of their followers are fundamentally questionable owing to their severity, intolerance and the obligations imposed on the children to practise proselytism’ without specifically explaining the reasons why the mother, who (21) was a Jehovah’s Witness, was a danger to her child.

In the legal culture of European countries – and in the case-law of the European Court of Human Rights – educational freedom, i.e.: A) the right of parents to direct their children towards a certain ethical realisation or certain moral, philosophical or religious beliefs, and B) the right of

¹ See, for example, F. Sudre, *L’apport du droit international et européen à la protection des droit fondamentaux*, in SFDI, *Droit international et droit communautaire - Perspectives actuelles*, Pedone, 2000, in particular p. 181-187 and G. Cohen Jonathan, *Aspects européens de droits fondamentaux*, LGDJ, 1996, 61.

² F. Sudre, ‘Existe-t-il un ordre public européen?’, in P. Tavernier, *Quelle Europe pour les droits de l’homme?*, Bruylant, 1996, p. 54.

³ C. Bernard, *Comment nos ministres font l’histoire. Le discours de l’instruction publique et ses procédés de persuasion*, Presses Universitaires du Mirail, 1990, p. 221.

⁴ V. Decision 2003/93/EC of the Council of 19 December 2002, authorising Member States to sign, in the interest of the community, the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.

⁵ With which Italy finally ratified the 1996 Hague Convention. V. M.G. Ruò, *La ratifica della Convenzione dell’Aja del 19 ottobre 1996*, in *Minorigiustizia*, 2015, 4, p. 43.

⁶ ECHR, 23 June 1993, *Hoffman v. Austria*, req. 12875/87, points 30-36.

the child to be instructed and maintained and to grow up in a safe and formative context – are fundamental rights. This freedom is a limitation to the actions of states, which cannot contradict the educational direction chosen by (22) the parents, unless the child is in danger.

3 __ AND EU LAW

The European Union includes education in its fundamental human rights. The Nice Charter, for example, mentions the *RIGHT TO EDUCATION* in Article 14: ‘everyone has the right to education’. This principle derives from the others expressed in Article 24: ‘Children shall have the right to such protection and care as is necessary for their well-being’ and ‘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 interests’. Therefore, while parents define the pedagogical direction of their children and, inversely, children have the right to receive a full education, they also have the right to maintain contact with both of their parents, even if they are separated from them: this right was laid down in both Article 9(3) of the International Convention on the Rights of the Child and Article 4 of the European Convention on the Personal Relations of the Child of 15 May 2003 (23).

Lastly, Article 33 of the Nice Charter protects *FAMILY LIFE*, which means ‘the family shall enjoy legal, economic and social protection’.

The Charter safeguards human dignity and respect for physical and moral integrity (24): it ‘does not affect in any way the right of Member States to (25) legislate in the sphere of public morality [and] family law’, but rather contributes to establishing a European public order. In addition, the European Parliament Resolution of 14 March 1984, the 1996 Hague Convention and Council Decision 2003/93/EC (19 December 2002) form the notion of European public order in the context of relationships between adults and children.

The European Union protects the family, which becomes the main context in which an individual’s personality is formed: the preservation of the family under EU law is so strong that, in the *AKRICH* judgment, the Court of Justice stated that, when assessing a spouse’s request to enter and remain in a Member State, the authorities should take into account the law on the right to family life, under Article 8 ECHR, provided that the marriage is genuine¹.

The only limit to preserving the family is, of course, public order: for example, the Court of Justice prohibited the family of a Turkish citizen who had been accused of several crimes against cultural heritage from being reunited. The family is therefore an (28) inviolable context unless it represents a threat to public order: once again, the state cannot intervene in family life but it can prevent it, if: A) family members are in danger; B) family members are a danger to the community.

The Court of Justice’s specific decision-making technique should be clarified: it refers to Article 8 ECHR, thus demonstrating that the concept of European public order in family law comes from the interaction of EU sources and the European Convention on Human Rights. The Court of Justice and the European Court of Human Rights protect families, children and their right to education. It is possible, however, for them to interpret the law differently, given the diversity of contexts and decision-making procedures in the two legal systems (29). These differences do not detract from the theory under which the right to education for children and, more generally, their relationships with their parents are considered to be inviolable values, protected at all levels by national and European law².

4. Provisional conclusions

We have spoken about European public order in a similar manner to the rushed traveller Roberto Bin, who touches on Venice, Florence and Rome, struggling to address all of Italy (31)

¹ ECJ, 23 September 2003, *Akrich*, C-109/01, Rec. I-9665.

² ‘European law’ here means EU law and the law under the European Convention on Human Rights.

in just a few days: we have dealt briefly with the main opinions of European judges – from the Court of Justice and the European Court of Human Rights – with regard to European public order applied to the family and, in particular, to the relationships between children and their parents. Our analysis has led to the following conclusions:

- the right to education is part of European public order: it is a subjective legal situation which belongs to children with a need to be addressed in accordance with the principles of life together;
- countries cannot intervene in the beliefs of parents with regard to education;
- the state can only intervene in the education of children in the event of a danger to the child or the community;
- a complete education indicates that the child has a continued relationship with both parents, therefore the state cannot arbitrarily halt the relations between a child and one of his or her parents.

It will be necessary to consider the validity of our conclusions on procedural law, that is to say, to consider whether the evidence gathered in spite of the inviolability of the family – and therefore the child's right to education and the parent's right to choose that education – can be used in a civil or criminal procedure.

5. PROCEDURAL PUBLIC ORDER

There is a *PROCEDURAL* public order, this means all the guarantees which connote (32) a fair trial and which influence how the legality of court actions is monitored (33)

. Firstly, one must consider Article 6 ECHR, under which judges must monitor the regularity of the procedure and uphold the rights of defence¹. According to the Court of Justice of the European Union, the 'exercise of the rights of the defence... occupies a prominent position in the organisation and conduct of a fair trial and is one of the fundamental rights deriving from the constitutional traditions common to the Member States and from the international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, among which the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, is of particular importance'².

The judges cited the European Court of Human Rights' *KROMBACH* judgment: once again, the decisions of the two European courts influence one another and form the basis of European public order.

In *KROMBACH*, the European Court of Human Rights ruled against France for breaching Article 6 ECHR, as the judges in Paris had handed down a fifteen-year prison sentence to Dieter Krombach despite his absence during the trial and in conflict with the *NON BIS IN IDEM* principle: he had been sentenced in Germany for the same acts³. (37)

Article 6 ECHR guarantees procedural public order: the *GAMBAZZI* judgment offers an important clarification: 'fundamental rights, such as respect for the rights of the defence, do not constitute unfettered prerogatives and may be subject to restrictions. However, such restrictions must in fact correspond to the objectives of public interest pursued by the measure in question and must not constitute, with regard to the aim pursued, a disproportionate breach of those rights'.

¹ In the ECHR on 20 July 2001 in *Pellegrini v. Italy*, req. 30882/96, for example, a breach of Article 6 ECHR was determined owing to an infringement of the right to adversarial proceedings.

² ECJ, 2 April 2009, *Gambazzi*, C-394/07, curia.europa.eu, point 28.

³ ECHR, 13 February 2001, *Krombach v. France*, req. 29731/96. The claimant's grievances are very interesting: he 'also submitted that the penalty for his failure to appear (namely the bar on his being represented or defended and the refusal to order new investigative measures) was disproportionate. He contended, firstly, that there had been no need for him to attend court in person because the Assize Court should have ruled on the *non bis in idem* principle on its own initiative before examining the charges against him. Above all, the applicant submitted that considerations relating to the proper administration of justice did not justify an accused being denied representation' (point 72).

Each state regulates civil and criminal procedures according to its own preference; as a result, structural differences are possible, although the rights and guarantees listed under Article 6 ECHR must be respected by national judges in their essence. If the defendant is ordered, under Italian law, for example, to (38) bring a case at least 20 days before the first hearing, Article 6 ECHR is not breached if, in another state, the defendant is ordered to bring a case within a different time limit: the important thing is that the party has the possibility to express his or her point of view and to request evidence.

6. THE CIRCULATION OF DECISIONS AND EVIDENCE CONTRARY TO EUROPEAN PUBLIC order in criminal procedures

There is a double level of protection in family rights-related proceedings which concern the interests of parents and children: on the one hand, the relationships between the two are protected under European law and, on the other hand, the participation of both parents and, as far as possible, of the children, is guaranteed under the rules of procedural public order.

If, for example, in a custody case, the father was not heard by the court even though he was available, and the judges take their decision on the basis of the statements and requests of the mother, there is a clear breach of procedural public order which also affects the right of the child to maintain contact with his or her father. In this case, there is a double infringement of public order, to a substantial degree, and of the rules of a fair trial. For that reason, under the 1980 Luxembourg Convention, ‘a request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by: ... C) in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the defendant was duly served with the document (39) which instituted the proceedings or an equivalent document’.

Procedural protection is secondary to the protection offered by substantive law, thus a decision which detracts from public order breaches the rights of the unsuccessful party twice: it is in fact an incorrect application of the law – or, if it is the law which contradicts public order, the judge does not refuse to apply it – and, for the purpose, it rules against a party without that party being heard or, in a more general sense, without it having the opportunity to make a statement in a trial compatible with Article 6 ECHR.

There are two possible conclusions:

1. the decision contrary to public order cannot be recognised in the other EU Member States;
2. the evidence obtained in the trial which led to the decision contrary to public order cannot be considered by a judge in another Member State: otherwise evidence contrary to public order would circulate within the Union.

We must now examine each of the two conclusions.

Allow me to state immediately that I am a specialist in criminal law and will therefore concentrate on the cooperation tools against transnational crimes: above all the European arrest warrant, the European protection order, the European survey decision and the means of recognising the decisions related to supervision measures as an alternative to provisional detention provided for in Council Framework Decision 2009/829/JHA.

In 1998 in Cardiff, the European Council was invited by the British delegation to ‘determine to what extent there is reason to extend the mutual recognition of court decisions’¹. This idea received the support of several Member States and led, in 2002, to the framework decision on the European arrest warrant². Thanks to the warrant, the act of delivering those accused or found guilty of transnational crimes (42) went from ‘weighty tomes’ of bilateral or

¹ The international federation for European law, *Police and Judicial Co-operation in the European Union. National Report 2004*, Cambridge, 2004, p. 339.

² V. G. de Kerchove, A. Weyembergh, *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, Brussels, 2002, p. 255.

multilateral extradition conventions to a single instrument which is shared by the whole European Union. Of course, each Member State implemented the framework decision in accordance with its own laws: furthermore, among the reasons for not implementing the warrant are, for example, the cases in which a state demands the competence to pursue the offence according to its own criminal law, or even cases in which the action forming the basis for the warrant does not constitute an offence under the law of the state in which it was committed. Articles 24 and 25 of Council Decision 2007/533/JHA made it possible for a Member State to request and obtain an indicator of validity with the aim of forestalling an arrest for surrender purposes if carrying out the warrant is not compatible with its national law.

Analogue mechanisms to protect national interests are targeted by Article 15 of framework decision 2009/829/JHA – which safeguards, under Article 5, ‘the fundamental rights and legal principles set out in Article 6 of the Treaty on European Union’ and which commits to protecting public order (Article 3) –, by Article 10 of Directive 2011/99/EU¹ and by Article 11 of Directive 2014/41/EU.

Cooperation in Europe with regard to criminal law is governed by national enactment legislation on framework decisions and directives: it is possible if Member States share the same values. That is where the link lies with the notion of European public order, which is specifically understood as a system of fundamental principles accepted and applied in all EU Member States.

Which brings us to the second conclusion: the evidence obtained in the trial which contradicted European public order cannot circulate within the Union. In fact, Article 11(F) of Directive 41/2014/EU makes it possible to refuse to recognise or implement a European investigation order in the Member State addressed if ‘there are serious reasons to believe that implementation of the investigation measure indicated in the European investigation order would be incompatible with the obligations of the executing state under Article 6 of the Treaty on European Union and the charter’. The rule is similar to that in Article 5 of Framework Decision 829/2009/JHA, which cites Article 6 of the Treaty on European Union and the Nice Charter, i.e. the sources of European public order.

When evidence enters a criminal trial in another Member State, the judge in that Member State must carry out a *USABILITY TEST* to determine whether the acquisition of this element could detract from the fairness of the trial or the rights of the parties involved. It is Article 6 ECHR which imposes the test with the aim of guaranteeing that the evidence is legitimate and the judge exercises his or her power in a way that is compatible with the right to a fair trial.

European countries lay down the exclusion rules for evidence which contradicts the law: in 1962, for example, the Supreme Court in the Netherlands stated that blood samples collected without consent cannot be used in criminal proceedings²; almost forty years later, in Italy, according to a judge, *CORPUS DELICTI* determined following an illegal search cannot be used to demonstrate the criminal responsibility of the defendant³.

This leads to an initial conclusion: national judges are free to evaluate evidence on the basis of their convictions and the evaluation rules which can be imposed by internal laws; an exclusion rule is provided for across the Union: evidence which contradicts the fundamental principles – i.e. which contradicts European public order – cannot circulate from one country to another.

Lastly, the double nature of European public order, substantive and procedural, which has been covered, ensures that usability checks by national judges with regard to evidence collected abroad take into account, on the one hand, upholding fundamental rights in the collection and

¹ F. Ruggieri, *Ordine di protezione europeo e legislazione italiana di attuazione: un'analisi e qualche perplessità*, in *Proc. pen. giust.*, 2015, 5, p. 99.

² It was the *Bloedproef II* judgment of 26 June 1962 (N.J. 1962, 470).

³ G.i.p. Bolzano, ord. 18 June 2000: which ruled that the judge cannot apply the *male captus, bene detentus* principle (v. Cass., sez. un., 27 March 1996, No 3) to any cases involving an illegal search because it would mean legitimising bad police conduct.

acquisition procedure and, on the other hand, the compatibility of the probatory situation with the fair trial principle outlined in Article 6 ECHR.

7. SUMMARY

To summarise what has been covered: family and the relationships between parents and children are part of European public order; evidence which fails the double *USABILITY TEST* or a decision which concludes an unfair trial cannot circulate within the Union. If, by chance, the rights of parents with regard to their children are breached during a trial, the result of this breach cannot be brought before a court in another Member State.

This premise makes it possible to explain the relationship between civil and criminal procedures when there are, on the one hand, issues related to the family and the education of children and, on the other hand, crimes against minors. The chosen example is that of parents discussing the custody of their children in one state and the mother then taking her children to another country without the father's permission: can the evidence acquired in the judgment on custody be used by the criminal-court judge in the other state? Yes, if the evidence passes the *USABILITY TEST*. Can the decision which gives the mother custody of her children be acquired for the child abduction trial abroad in order to demonstrate that the woman has taken her children across the border in an effort to protect them? Yes, if the civil procedure complied with Article 6 ECHR and, in a more general sense, the values of procedural public order.

8. The *JUGENDAMT* case

The *JUGENDAMT*, the German body responsible for young people, offers a very good example of our theory. In the debate of 15 January 2008 at the European Parliament in Strasbourg, Bogusław Rogalski, of the UEN Group, said: 'every child must have a guaranteed right to have continuous and direct contact with both parents, as well as the right to be brought up in the parents' culture and the right to learn the language of both parents. These rights are repeatedly violated by the German Office for Children and Young People, the *JUGENDAMT*, as regards children one of whose parents is foreign. In cases of divorce, the *JUGENDAMT* uses any method to deprive the parent who is not German of their parental rights'¹. Hanna Foltyn-Kubicka, also from the UEN Group, said: The provisions creating the *Jugendamt* date back to 1939, I repeat, 1939, and they continue to function under the law in an almost unchanged form. This institution acts on behalf of what is called the good of the child, but this concept has not been defined anywhere, which means that it can be interpreted in any way whatsoever. In proceedings, the *Jugendamt* favours parents of German background. Another concern is that it is not subject to any outside controls.⁽⁴⁷⁾

If they are right, the *JUGENDAMT* is in breach of European public order: in that case, the office's records cannot be acquired in a civil or criminal procedure abroad, nor can the decision of a judge, which is based on the accounts of the *JUGENDAMT*, circulate within the Union.

In Germany, the SGB gives special powers to the *JUGENDAMT* in judgments before the family tribunal (§50), on the adoption of a child (§51), or in relations with the tribunal for minors (§52). Under §1712 BGB, at the request of a parent, the *JUGENDAMT* becomes the guardian of the minor and takes the place of the child's father or mother: the office for children is therefore the third parent.

The *JUGENDAMT* can intervene heavily in the lives of families which fall under its attention: the office's reports can be used by German judges and, more precisely, by the family tribunal or the tribunal for minors.

The description provided below – containing three parents (the father, the mother and the *JUGENDAMT*) or one of the two natural parents and the office for children – is compatible with Article 6 of the '*GRUNDGESETZ*' (*GERMAN BASIC LAW*): under the second paragraph 'raising and

¹ The debate can be found at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20080115+ITEM-015+DOC+XML+V0//EN&language=HR>.

educating children are natural rights of parents and an obligation which falls to them first and foremost. The state community shall watch over the manner in which these tasks are carried out’.

The meaning of ‘watch over’ must be understood: abstractly, it can be said that the state intervenes when parents breach the rights of their children, by not sending them to school or by preventing them from having a normal life, for example. If Article 6(2) of the *GRUNDGESETZ* is read in the sense indicated by the European Court of Human Rights, the right of minors to education – and inversely that of parents to educate their child – is part of European public order. The state’s activity with regard to families cannot detract from the rights of the family members.

If ‘watch over’ is read in the sense of allowing the *JUGENDAMT* to intervene in the relationships between parents and children by means of it replacing the father or the mother, the application of the *GRUNDGESETZ* given under the law and the State praxis contradicts European rules on the family and, consequently, European public order.

If a German judge applies §§50 or 52 of the SGB in a manner which does not allow one of the parents to participate in the judgment before the family tribunal or the tribunal for minors, as the parent has been replaced by a member of the *JUGENDAMT*, this constitutes a breach of Article 6 ECHR and procedural public order.

In all the cases that have been examined, an account by the office for children which contradicts the freedom of education cannot circulate in the European Union. Let us consider the real case in which an Austrian citizen took her two children to Innsbruck against the will of their Italian father: the trial for the abduction and retention of the children abroad began in Italy (Article 574(a) of the Italian Criminal Code). In the judgment, the defendant’s lawyer called on the Italian judge to acquire the Austrian *JUGENDAMT*’s account in an effort to demonstrate that the minors preferred to stay in Austria rather than return to Italy. The Italian judge rejected the documents presented by the defence because they were not certified copies (48) in accordance with the act produced by the office for children. In addition to the problem with their form, the Italian judge was not able to accept the documents because the father had demonstrated that he was never heard by the *JUGENDAMT* or the Austrian judge in the custody and repatriation procedures. In other words, the Austrian judge and the office for children made a decision on the relationships between the children and their parents and on their stay in Austria without hearing the father: there was a breach of procedural public order from the point of view of the possibility for the claimant – in this case the father – to address the judge responsible.

It is possible to draw conclusions for a project to safeguard the family under European law. The Member States can watch over the relationships between parents and children: the verb ‘watch over’ from the *GRUNDGESETZ* is only compatible with the Strasbourg Convention if one reads it as ‘to protect’. The Italian Constitution, for example, in Articles 30 and 31, refers to the ‘protection’ of childhood and motherhood, thus the state cannot choose the place of education for families, but can outline policies to support parents, minors, schools and young people in general. Any activity which is more invasive contradicts European law or, more specifically, European public order: the results of these invasive activities cannot circulate within the Union and cannot demonstrate an inadequate level of education afforded to a young person; for those reasons, they are not permissible in a procedure, even a criminal procedure, as they are unusable.

* Account from the *meeting* of the *Working Group on Child Welfare* (Committee on Petitions of the European Parliament) - 29 September 2016.

² See M. Cappelletti, *Il controllo giudiziario delle leggi nel diritto comparato*, Giuffrè, 1968, p.9.

³ F. Matscher, *Methods of Interpretation of the Convention*, in R. McDonald, F. Matscher, H. Petzold (under the direction of), *The European System for the Protection of Human Rights*, Nijhoff Publishers, 1993, p. 63.

⁷ F. Sudre, *Introduction*, in F. Sudre, H. Labayle (under the direction of), *Réalités et perspectives du droit communautaire des droits fondamentaux*, Anthemis, 2000, p. 11. See also, F. Chevillard, *Droit communautaire des droits fondamentaux*, RTDH 2000, p. 503.

⁸ ECJ, 27 June 2006, *Parliament v. Council*, C-540/03, JDI 2007, No 2, p. 636.

¹² Plato, *The Republic*, Book IV.

- ¹³ P. Foulquié, *Dictionnaire de la langue pédagogique*, P.U.F., 1971.
- ¹⁷ For a full analysis, see: A. Thiene, *Figli, finzioni e responsabilità civile*, *Famiglia e diritto*, 2016, 3, p.241.
- ¹⁸ V. Turchi, *Libertà religiosa e libertà di educazione di fronte alla Corte di Strasburgo*, *Stato, Chiese e pluralismo confessionale*, 8 oct. 2012, www.statoechiese.it, p. 2.
- ²⁰ ECHR, 16 December 2003, *Palau-Martinez v. France*, req. 64927/01, points 30-43.
- ²¹ The court does not apply the criteria expressed in the *Palau-Martinez* judgment in international child abduction cases: a Swiss woman brought her son to Switzerland to take him away from his Israeli father. The father was a Jewish fundamentalist and, for that reason, the mother feared for her son's health. The Swiss authorities ordered that the child be repatriated to Israel. The mother appealed to the European Court of Human Rights; the European judges stated that the measures taken by Israel to protect the child were sufficient. Once more, the educational choices of parents are considered inviolable, in this case in spite of the specific elements presented by the mother to report the danger of the father's religious orientation. V. ECHR, 8 January 2009, *Neulinger and Shuruk v. Switzerland*, req. 41615/07. The Grand Chamber swept away the first decision: the child's best interest must always be considered (decision of 6 July 2010).
- ²² Generally, and from a national perspective, public order 'covers proper order, security and political peace' (see AA.VV., *Libertés et ordre public. 'Les principaux critères de limitation des droits de l'homme dans la pratique de la justice constitutionnelle' (The main criteria limiting human rights in constitutional justice practices')*. 8th seminar of the constitutional courts held at Erevan from 2 to 5 October 2003, in www.conseil-constitutionnel.fr); the state can limit the rights of its citizens only to safeguard proper order, but it cannot otherwise intervene in the lives of individuals. For that reason, it can be said that public order is the foundation of, and the principle limitation to, state action.
- ²³ V. G. Vogel, *Encyclopédie judiciaire de droit luxembourgeois*, DBIT, 2016, p. 94.
- ²⁴ *Amplius*, B. Favreau, *La Charte des droits fondamentaux de l'Union européenne après le Traité de Lisbonne*, Bruylant, 2010, p. 108.
- ²⁵ See Declaration No 61 by Poland on the Nice Charter, in OJ No 115 of 9 May 2008, p.358.
- ²⁷ ECJ, 11 November 2004, *Cetynkaya*, C-476/02, Rec. I-10924.
- ²⁸ M. Castellaneta, *Al giudice nazionale spetta il compito di verificare i motivi di ordine pubblico*, *Guida al diritto*, 2005, 1, p. 63.
- ²⁹ *Amplius*, G.M. De Muro, *I rapporti fra Corte di giustizia delle Comunità europee e Corte europea dei diritti dell'uomo*, 31 May - 1 June 2002, archivio.rivistaaic.it.
- ³¹ The reference is to R. Bin, *La protección interna de los derechos*, regarding the Convention «*La protection de los derechos en un ordenamiento plural*», Barcelona, 17-18 October 2013, being published.
- ³² V. M.C. Meyzeaud-Garaud, *Droit international privé*, Bréard ed., 2008, p. 177-178.
- ³³ A. de Theux, I. Kovalovszky, N. Bernard, *Précis de méthodologie juridique: les sources documentaires du droit*, Publications des Facultés Universitaires Saint-Louis de Bruxelles, 2000, p. 565; see also A. Fettweis, *Manuel de procédure civile*, Fac. de droit de Liège, 1985, p. 248.
- ³⁷ ECJ, 2 April 2009, already cited, point 29.
- ³⁸ Article 166 of the Italian Code of Civil Procedure.
- ³⁹ *The European Convention on the recognition and enforcement of decisions concerning custody of children and the restoration of custody of children*, known as the *Luxembourg Convention*, signed in Luxembourg on 20 September 1980 (ETS No 105). On this subject, A. Dyer, *Relocation of Custodial Parents and their Children within the European Union and Problem of Access. The Scope of Timing of Judicial Involvement*, in AA.VV., *E pluribus unum. Liber amicorum Georges L.A. Droz*, Martinus Nijhoff Publishers ed., 1996, p. 68.
- ⁴² The expression comes from E. Barbe, H. Boullanger, *Justice et Affaires intérieures dans l'Union européenne: un espace de liberté, de sécurité et de justice*, French documentation ed., 2002, p. 128.
- ⁴⁷ See footnote 46.
- ⁴⁸ Trib. Grosseto, ord. 22 December 2016.

Comments by Maître Muriel Bodin (meeting of the Working Group on Child Welfare of 29 September 2016)

The Jugendamt, as an administrative service under the auspices of local councillors in urban centres, assists Family Courts with regard to all measures concerning children and adolescents. This gives it a decisive say in all family proceedings and in their outcome. The Jugendamt is a stakeholder in the same way as the parents of children affected by these measures and may choose to act as guardian with or without the consent of the parents who are considered only as genitors and not educators.

The problem is that the Jugendamt is biased, as it has its own criteria for determining the child's interests which are societal rather than family criteria - criteria relating to local administration, rather than to the child as a person. It is also responsible for implementing Family Court decisions and the Jugendamt may interpret these decisions narrowly or broadly as it sees fit.

Moreover, the Jugendamt is also a player in the judiciary, as it evaluates the performance of judges in family cases and can thereby influence their careers.

Thus the Jugendamt is not only partisan, it also assesses the judges who take the decisions on which the Jugendamt issues opinions; this makes judges very sensitive to these opinions that they endorse without taking into account the context or obtaining the evidence on which these opinions are based.

In virtually every case, preference is given to German nationals. Preference is also given to the mother. German is the only language used.

The following rights are thus violated:

- 1) The right to a fair trial for the non-applicant parent; this requires at the very least that both sides of the argument should be heard, that the points in the debate should be translated and interpreted, that a genuine investigation should be held and that the proceedings should be impartial; instead German fellow-citizens are given preference by the Jugendamt.
- 2) The right of the child to be heard (right to fair trial as one of the parties) and to know both parents (International Convention on the Rights of the Child) and be raised by them.
- 3) The right to freedom of movement and freedom of establishment within the EU, since a child is forbidden from approaching a parent who is not a resident of Germany, outside the borders of Germany.
- 4) The right to enforcement of judgments within a reasonable period of time.

Oral intervention:

Mrs Bodin started her intervention by reminding that Germany and France are two founding countries of the EU, with remarkable child protection systems with both their own shortcomings. She estimates that it is important to take into account the unfairness of family law where the decision of the judges are based on human relationships. She recalled that in

family justice, the judges cannot rely only upon the testimonies of the parents and need the support of an external body to take their decision. This situation raises problems in every countries. In Germany, this support comes from the Jugendamt. She highlights several characteristics of this administrative body:

- Jugendamt offices are under the responsibility of local authorities, which means that there is no harmonisation of the recruitment and training of their staff at a national level and might explain sometimes the difference in the quality of the services provided;
- there seems to be a presumption of innocence in favour of the German partner in case of separation of a couple and the decision taken in consequence to this separation are unilateral, without adversarial phase;
- the opinions provided by the Jugendamt are in practice almost mandatory and only the Jugendamt can appeal the judge decision;
- the Jugendamt is also responsible for the execution of the judicial decisions which can be very long sometimes and can decide of the temporary measures related to the child in between without any consideration of the parents feelings;
- the Jugendamt services mark the judges and somehow can influence their career;

She concluded with two remarks: a State is responsible for its organisation and must respect its own legislation/Constitution and the policy of regionalisation might offer some possibilities of improvements in the quality standards of the social services and in the relations between regional services of different Member States.

Intervention of Marinella Colombo

Ladies and gentlemen,

I should like to take this opportunity to thank the Committee on Petitions for agreeing to consider a complex subject - the German family system and its Jugendamt, which, since the mid-1990s, has been a source of concern to thousands of families in Europe, but which has not so far received any clear explanation, due to the shortage of non-German specialists on the matter.

I would remind you that in 2008 the Committee on Petitions drafted a first working document on the subject. It already confirmed the seriousness and extent of the problem, without, however, suggesting any avenue to be pursued in search of a solution.

Then, in 2011, following a visit to Berlin by the outgoing Committee on Petitions' working group, a second working document was drafted. The then Chair – Ms Erminia Mazzoni – had stated publicly that its drafting had taken more than a year because German Members of the European Parliament, even if they had not participated in the visit, had tried to obstruct the work of the drafters, in order to conceal the true situation.

The document published in 2012 made it possible for those in authority in Germany to convince their counterparts that their administrative and judicial system was similar to those of other EU countries (<http://jugendamt0.blogspot.it/2012/12/strasburgo-i-diritti-dei-minori.html>). Neither the fact-finding trip nor that document shed any light on the matter, let alone pointing to an embryonic solution. The problem persists and is getting worse by the year. The very numerous citizens who are affected – both Germans and people of other nationalities – are now placing all their hope in the efforts of your working group, which is expected to ascertain the facts and put forward a practical solution. I wish to contribute to that effort.

Various questions need to be considered, the first being why the German establishment is

trying to claim, and doing everything in its power to persuade people, that its family justice system (legislation, courts, etc.) is identical to those of other European countries, if it is giving rise to so many petitions.

It is true that, at first sight, the system may seem to be identical. However, it is backed by a powerful political system (Jugendamt) which operates in the background, without there being any means to oppose it effectively, to prohibit it from implementing its political decisions in other European jurisdictions, which are compelled by European regulations to recognise them without an enforcement order (exequatur). The decisions of the Jugendamt therefore have a direct impact in other jurisdictions. It is on this basis that Germany can no longer take refuge behind the pretext of national sovereignty in legal matters to refuse to allow European bodies to exercise powers of scrutiny, scrutiny which cannot be confined to issues of 'correct application' but which must extend to the correctness of the procedure on which judicial decisions are based. If the 'exequatur' principle were reintroduced, I can assure you that most of the decisions on family justice issues taken in Germany would be inadmissible in our jurisdictions.

First of all there is the key problem of how to translate the German judicial terms. The German system provides for institutions and measures which have no equivalents in our jurisdictions (Jugendamt, Verfahrenspfleger, Beistandschaft, etc.). These terms can only approximately be rendered into other languages, and the way in which that is done by no means reflects either the prerogatives of the parties concerned or their interactions in the judicial procedure. That gives rise to misconceptions.

The JUGENDAMT (pronounced 'You-Gen-Tamt').

This term is generally translated as 'child protection service'. In reality it is anything but: it has more powers than a court and its purpose is not what we are encouraged to believe.

In court, it is a party to all cases where a minor is involved. That is true even if the parents have full parental authority over their children and not therefore – like the social service or the guardian in other countries – in the case of problem families or when it has been necessary to withdraw parental authority from the parents. It may be said that, in Germany, a child has three parents: the Jugendamt is automatically designated, as provided for by Article 50 of Book VIII of the German Social Code (SGB = Sozialgesetzbuch).

It is not an auxiliary to the court, but on the contrary it gives the court its 'recommendation' on the decision to be taken well before the first hearing. If the court has the temerity to rule differently, the Jugendamt may appeal against the decision, as also indicated in Article 162 of the Law on procedures for family cases and non-contentious proceedings (FamFG = Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit).

The Jugendamt is officially designated 'öffentlicher Träger der Jugendhilfe', as against 'freie Träger der Jugendhilfe' (the latter being political and church bodies). At federal level, the Jugendamt is exempt from parliamentary control. It operates under the aegis of a public-interest association, the AGJ e.V. in Berlin, which in particular acts as an umbrella body for the 16 'Landes-Jugendämter' or 'national' directorates of the Jugendamt (those in each of the 16 German states, the 'Länder'). Its annual budget, which varies from year to year, totals several billion euros.

At local level, the Jugendamt is the public part of the very secretive Jugendhilfeausschuss, 'youth assistance council' (the term 'assistance' needs to be taken with a pinch of salt here). The Jugendamt relies on the autonomy of the communes, which is guaranteed to it by Article 28-2 of the Grundgesetz. That is the argument used by German parliamentarians (Members both of the Bundestag and of the European Parliament) when they claim that they have no power to resolve the problem, or rather to conceal their reluctance to alter an ultra-

nationalistic, discriminatory system.

The Jugendamt acts as a register of births, deaths and marriages, it receives recognitions of paternity (Vaterschaftsanerkennung) from unmarried fathers and declarations of intent to share parental care (gemeinsame Sorgeerklärung) – if that is what a German mother wishes – and keeps the register of such declarations.

The numerous other functions of the Jugendamt are stipulated in Book VIII of the German Social Code (SGB - not to be confused with the BGB, the Civil Code), in the Law on procedures for family cases and non-contentious proceedings (FamFG), and in the law on advances of maintenance payments (Unterhaltsvorschussgesetz - UVG).

Another party to procedures relating to families in Germany which has no counterpart in other countries is the VERFAHRENSBEISTAND (previously Verfahrenspfleger).

As there is no counterpart for this, it is wrongly translated as ‘child’s lawyer’; in reality, this person’s legal role is a different one, requiring him to represent the interests of the German State, and a literal translation of the term is ‘assistant to the procedure’. This therefore has nothing to do with the interests of the child. That is very clear when one of the two parents is a foreigner: the Verfahrensbeistand submits his report to the court without even knowing the foreign parent. Or, to cite another example: if a child who is old enough decides to choose a lawyer for himself, the law does not permit that.

The Verfahrensbeistand is, for example, the person who is required to ensure that a child who is in Germany, even as a result of abduction, remains there. He therefore attends training courses to learn how to write reports claiming that a child who has been abducted to Germany has integrated well into his new surroundings and that, as the Conventions require, he should accordingly stay there.

Reading hundreds of case files shows that the Verfahrensbeistand claims that the child has assimilated well in Germany and is already speaking German just a few weeks after having been illegally brought into the country!

The VERFAHRENSPFLEGESCHAFT (pronounced ‘Fer-farern’s-pflayg-shaft’), or more recently Verfahrensbeistandschaft, is therefore, together with Beistandschaft (pronounced ‘By-stant-shaft’), which will be discussed later, the measure which renders legal remedies ineffective for parents, relegating them to the role of mere spectators of a procedure concerning their children.

Another point on which the German system differs from those of other countries is the way in which children are interviewed.

In Germany, children are interviewed from the age of three, as provided for by international conventions and consolidated German case-law.

The first consequence of this practice is this: as in other EU Member States, a three-year-old child is not interviewed (children are interviewed only once they reach a certain maturity), which allows Germany to refuse to recognise judicial custody decisions taken in other countries, precisely because the child has not been heard.

Another consequence: three-year-old children are asked whether they like their kindergarten, whether they have any friends, whether the nursery nurse is nice, and so on, and that is enough to show that the child is well assimilated and that, as regards the principle of continuity, the most important thing is that he should remain in his social milieu, even if that means that he will lose his mother, who for example has been relocated abroad by her employer.

In a word, the hearing is used to claim that the social milieu is more important than the foreign parent (given that the German parent provides a permanent home in Germany).

But that is not all: the hearing of the child is not recorded, and neither the parties nor their lawyers attend it. It is therefore not known what questions have been asked and, above all,

how they were asked: according to statements by slightly older children, leading questions are always put (making it clear what answer is expected).

Only the German State participates in the hearing: the judge, the Verfahrensbeistand and often the Jugendamt. The parents receive only a brief summary confirming, in every case and as if by chance, what the Jugendamt had written in its prior recommendation to the court.

BEISTANDSCHAFT of the Jugendamt (pronounced 'By-stant-shaft') is the central measure of the German family-law system. In practice, it renders judicial procedures ineffective, and anticipates them. It introduces by administrative means, unilaterally and before any legal ruling is given, a series of binding measures, tacitly endorsed during the legal proceedings, which exploit the minor child and the German parent without their knowledge.

The measure known as Beistandschaft of the Jugendamt is falsely presented as being merely an application for advance maintenance payments which is right and fair. It imposes on the German parent who seeks it a contract under which they undertake to live permanently apart from the other parent (they are no longer permitted even to spend a few days' holiday together). It requires the relationship between the child and its foreign parent to be broken off and the child's non-German origins to be eradicated (the child is not permitted to visit its parent who is living abroad). And above all it seizes the assets of parents that it has duly excluded, whether this means a foreign parent in Germany or assets abroad. Beistandschaft therefore makes the Jugendamt a central and major component of the German economy.

It should be recalled here that, when a child is abducted by his German mother from a foreign country to Germany, before the non-German father forwards his repatriation application to the authorities, he receives the Beistandschaft letter, informing him that the child is living in Germany with its mother and that the child is claiming money from his non-German parent! The Jugendamt threatens the non-German parent with court proceedings (while thus confirming that it is in the process of substituting itself for him) and it requires him to send all his income and his savings.

It has many effects, which in practice cannot be contested by legal means. I shall confine myself here to listing the main ones:

Fundamentally, Beistandschaft enables the Jugendamt to place the German parent, or the parent whom it expects to keep the minors in Germany, under its guardianship, with the aim of securing a minor's share of the rights to financial aspects and assets ('Vermögenssorge'). The child is automatically placed under its economic guardianship, with the aim of asserting these rights as a State against the parent who is to be excluded (the non-German parent), before the case is brought before the family court and without conceding the slightest right to the latter.

In this way it duplicates – in advance – the court procedure relating to the civil aspects of the relationship between the minor and the parents, of a binding administrative procedure pertaining purely to financial and property aspects of the child as an economic actor.

It renders legal remedies ineffective which might have been used to contest its discriminatory nature. It entrusts in advance the 'protection' of the child to the German parent, awarded custody of the child with the aid of persuasion, accordingly making the non-German parent the parent without custody.

This measure applies for a maximum of 72 months (6 years) – the requisite period in order for judicial remedies relating to the new parental relationship arrangements to be exhausted – in order, at the end of the period, to cumulate the amount of arrears calculated before any court ruling (between EUR 10 000 and 30 000 per child), and secure from the court a payment order restoring to the German parent the economic share of their parental rights (Vermögenssorge) seized when the measure was implemented. It then uses that German parent as cover to seek the enforced execution of the order by imposing a salary attachment

order (in Germany or abroad by means of European regulations) against a debtor – the non-German parent – who now has no legal remedy.

I ought to make it clear that European Regulations 2201/2003, 4/2009 and 650/2012 currently put Germany in the position of exporting the effects of its *Beistandschaft* to every jurisdiction in Europe and exploiting foreign authorities to execute its political decisions, without their having any opportunity to contest this.

The KINDESWOHL (pronounced ‘Kin-des-voal’).

The Kindeswohl is the principle which binds all parties involved in family law decisions in Germany. It does not mean the best interests of the child (which would be called ‘das beste Interesse des Kindes’), or the child’s welfare as we understand it in our cultures. This term needs to be understood in the light of the economic implications that a child has for the reunified economic territory of Germany (Article 133 of the Grundgesetz).

As the child is effectively the property of a ‘super-parent’, namely the ‘Jugendamt’, which represents the economic interests of the German community with regard to children, the term Kindeswohl ought to be interpreted in the Hegelian sense, namely that of a society whose role is to preserve not the welfare of the child (its relationship with its two parents), but that of a society in which the child is used to ensure the welfare of that society. Kindeswohl should therefore be translated and interpreted as the ‘economic’ wellbeing of the German community pursued by means of the child’, or else as the ‘wellbeing of the German people pursued by means of the child’. The child is the instrument of national enrichment.

In fact it is the Germans themselves who confirm to us that in their country the best interests of the child are primarily seen as being to grow up in Germany, as was stated in Berlin in November 2011, at a meeting of representatives of the Länder. I quote: ‘Deutschland braucht jedes

Kind, aber auch jedes Kind braucht Deutschland’ = Germany needs every child, but every child also needs Germany.

Anyone who understands this interpretation of children’s welfare will no longer be surprised by what petitioners complain of, and above all will appreciate why a non-German parent separated from his or her German spouse (or a couple of non-German parents residing in Germany) always constitutes a danger to the child, as we read in all the case files sent by parents to the associations with which I work.

Once this ‘economic’ concept of the welfare of the child in Germany is understood, the role of the Jugendamt as the guardian of this Kindeswohl, but also the precedence taken by economic rights (governed by the supreme law of the market and regulated by the Basic Law) over the civil rights of individuals (which are governed by the constitutions of the 16 German states and the 27 non-German states), then the nationalism and the arbitrary nature of the administrative and judicial decisions taken in Germany can readily be explained and seen to possess a natural logic.

But the concept also makes German family law fundamentally incompatible with the family law of other European jurisdictions. That is because that system makes the administration of family justice the service provider for an economic entity superior to it – the Jugendamt – which has to manipulate the law (its own, that of its partners and European regulations) in order to pursue the economic purpose of any capitalist society: maximisation of its capital by means of the child.

It is in the name of this economic Kindeswohl that the Jugendamt decides, with the concurrence of the judicial system, to grant the ‘usufruct’ of a minor to whichever of its parents will contribute to future economic prosperity, because he or she is guaranteed to keep the child within its jurisdiction and ‘cooperates’ with it, meaning that the parent accepts all its instructions unopposed.

It is in the name of a 'possible threat' or of a potential economic 'threat to the Kindeswohl' of the Germans ('Kindeswohlgefährdung'), that the Jugendamt and the police justify the brutal administrative abduction of a minor in Germany and the deliberate criminalisation of its non-German parent, not even hesitating to deliberately seek the intervention of foreign police forces (Europol, the Schengen Agreement, the European Arrest Warrant, when the parent is simply on holiday with his or her child), when the minor has been LAWFULLY taken outside Germany. Later, during the judicial procedure, the gratuitous criminalisation of the foreigner and the intervention of the foreign police serve as grounds justifying brutal and illegal action and the concomitant confiscation of the parental rights of the non-German partner.

A mere suspicion (rather than tangible proof!) that a non-German parent might raise his child speaking another language or that he might move with the child outside the territory where the Jugendamt exercises control over the family courts – and what does it matter if that parent has legally been awarded custody of the child? – constitutes a potential threat to the Kindeswohl of the German people.

It is in the name of this sacrosanct principle of the economic Kindeswohl of the German people that such measures are taken as for example deleting the name of a foreign parent from a child's birth certificate, germanising his surname (while also obliterating the non-German mother), depriving a parent of any human right, while asserting 'economic' rights against them, namely requiring them to pay maintenance for a minor on whom they have no legal claim.

Or radically eliminating foreign parents from the lives of their children because they have the temerity to separate from their German spouse – thereby evading the control of the German parent who plays the role of sentinel within the couple in the eyes of the Jugendamt – or, even worse, who wish to leave Germany together with the children.

The Jugendamt is the 'guardian' of the (economic) 'Kindeswohl' of the German community. In that role, it defines itself as a Wächteramt (guardian agency). Its real remit is to protect the human capital represented by children and parents for the benefit of the Federation and to maximise its utility.

I shall publish a complete list of its opaque, disguised activities in a university paper. As you can see from this brief account, the characteristics that differentiate the administration of family justice in Germany from that elsewhere in Europe are many and varied. Above all, they are very complex and difficult to identify for anyone who does not know the system in depth and has not himself experienced all its baseness.

In the light of what has been said here, it is clear that the system under discussion is one that has been planned down to the smallest detail, in which family justice is of a purely formal nature. It gives the impression of justice and of adversarial proceedings producing what are in fact political decisions of the Jugendamt which merely serve Germany's economic interests. Here, I have not discussed the conduct of legal proceedings as such, or the lack of effective means of appeal to the European Court of Human Rights.

I would remind you that the first petition against the Jugendamt (the petition lodged by 10 parents) was submitted to the European Parliament 10 years ago. It already called for suspension of mutual recognition of German court rulings (Regulation 2201/2003), until the role of the Jugendamt in taking decisions on families had been clearly established. Since then, in the absence of a response appropriate to the seriousness of the facts (legal despoilment of children and seizure of foreign assets elsewhere in Europe by means of the German courts), the problem has become considerably more widespread and more serious.

I beg you no longer to underestimate either the nature or the extent of this serious problem, which is the source of a deep-rooted nationalism. It is also a source of very deep resentment, not only towards the German people – whose elite are guilty of unspeakable and systematic

actions in this context which they constantly seek to relativise – but above all towards a European Union which, after having imposed the application of German rules in all European courts – without having ascertained in advance what the effects would be – is now incapable of protecting these citizens against the violence of acts by the German administration, which is using their children as instruments of economic policy, to obtain their labour and secure access to their assets.

I remain at your disposal to answer any further questions and to supply whatever documents you may request.

Marinella Colombo

Holder of a Master's in modern languages and literature from the University of Milan and a Master's in the law and protection of minors from the University of Ferrara

Annex 4D

Summary of the intervention of Mr Hoffman, representative of a Jugendamt of Berlin, meeting of PETI Committee 10 November 2017

Mr Hoffmann informed about the responsibility for the Jugendamt in the federal structure of Germany, which belongs to the competences of the 16 federal states. He outlined the tasks and structure of the Jugendamt, its relationship with family courts and the appeal mechanism. He highlighted that due to a large number of cases concerning child neglect, the protection mandate of the Jugendamt has been comprehensively reformed in 2008. While decisions on interventions in parental care can only be taken by a family court, there is one exception when the Jugendamt is obliged by law to act. If a dangerous situation cannot be immediately averted, for example together with the parents, the child can be taken “Inobhut” (into care). The family court must then be immediately involved and confirm or reject this decision.

Mr Hoffmann informed that while children are being heard, such hearings are not recorded. In case of divorces of parents, he underlined that the Jugendamt objective is to find a common solution between the parents. Only if the parents cannot agree, the child’s wellbeing is paramount - and not the interest of the parent. While the family court is obliged to hear the Jugendamt, it does not have to follow its instructions. Mr Hoffmann also highlighted that there is no mutual influence or dependency in the relationship between the family court and the Jugendamt and that both are independent in their decisions. Furthermore, he said that in case of separations, there are eight main aspects regarding parental care to decide about while each of them can be contentious (e.g. who determines the right of residence, questions concerning frequency of contact, passport issues, religion issues, healthcare issues). He underlined that the solution is dependent on the will and the ability to communicate and cooperate on both sides, and the tolerance to accept a relationship of the children with the other parent.

Mr Hoffmann also informed that in 80% of cases, parents succeed to find a common solution. In 15-18% of cases, parents also manage to do so following professional counseling and support. Only a handful of cases are extremely problematic, where all mediation attempts fail and parents refuse to make compromises. From his experience, such disputes are projected onto the institutions involved which are blamed for the failure. If the parents can’t agree on shared custody, the conflict becomes very sharp and children’s best interest often disappears from their focus. In his opinion, this is the core of the problem. He also added that this applies to German cases just as much as to intercultural cases.

Mr Hoffmann highlighted that there is no systematic discrimination of any group of people on the basis of nationality. However, he can understand that the complexity of the German procedure, the language obstacles, the distances, the different legal norms of the countries and the different educational concepts can lead to misunderstandings and being seen as discrimination.

Finally, he thinks that such assumptions are not correct. He added that disputes can last for years, go through many stages of appeal and end up in the Petitions Committee. While they are tragic individual cases, from his point of view, the difference of nationalities is not the key here, but rather the inability to compromise and refusal to cooperate, matters that cannot be influenced by any external authority. He put forward two specific solutions, precisely training on problems solutions and putting in place more intense international exchanges of officials and judges to raise awareness of the different structures, concepts and ways of working in the various Member States. This will improve the mutual understanding and communication between concerned citizens and officials.

Annex 4E
Letter to the German authorities

To the attention of
Ms Manuela Schwesig, Federal Minister for Family Affairs, Senior Citizens, Women and
Youth

Dear Minister,

The Committee on Petitions of the European Parliament (PETI Committee) has been dealing with petitions related to Jugendamt in cross-border custody disputes for the past years. It has conducted, among other things, a Fact Finding Visit to Germany specifically on this matter. Most recently, it has entrusted this question to its Working Group on Child Welfare issues. In its meeting of November 2016, the PETI Committee discussed the role of the *Jugendamt* in family law proceedings and some aspects of the German family justice system, as raised in the petitions received by the European Parliament (EP).

On the latter occasion, the Chair of the Working Group on Child Welfare Issues presented the outcome of the Working Group meeting held in September 2016, which had addressed the questions on the same issues.

The Members of the Committee also had the opportunity to hear some of the petitioners that denounced, on transnational cases, alleged violations of EU fundamental rights and international obligations. In the same meeting, a representative from one of the Berlin *Jugendamt* offices presented the work of the *Jugendamt*.

Taking into account the number of petitions received with similar complaints and the importance of this issue for the good functioning of the European Union, the PETI Committee would like to offer the best possible follow-up to these petitions. For this purpose, it would appreciate if it could receive some further clarifications on the different matters raised by the petitioners.

First of all, the principle of *Kindeswohl* is regularly mentioned in the petitions received by the Committee. It seems that its meaning is still unclear or even controversial to some parties involved.

Therefore, we kindly invite you to reply to the following questions:

- Could you clarify on the basis of which principles *Jugendamt* conducts its activities?
- According to paragraph 1697a of the German Civil Code (BGB) decisions are to be issued on the basis of the so-called *Kindeswohlprinzip*. Could you clarify what the definition of *Kindeswohl* is and its legal basis under German law? Is it applicable to the “care of property/ownership” (*Vermögenssorge*) or to the “care of the person” (*Personensorge*)?

The definition of *Sorgerecht* and the decision of *Vermögenssorge* are also often contested by petitioners. By consequence, we would like to know:

- In which paragraph of the German Civil Code (BGB) (other than paragraph 1626, which provides the legal definition of *elterliche Sorge*) one can find the definition of *Sorgerecht* (i.e. right of custody)?
- Which body does take decisions concerning the *Vermögenssorge* of the child? Is it the *Jugendamt* or is it the *Familiengericht* (Family Tribunal)?

Furthermore, with regard to the idea of *Bindungstoleranz*:

- Could you clarify how it is interpreted by the *Jugendamt* and by the other actors involved in family disputes?

The PETI Committee would also like to know if it would be possible to access data at federal and/or regional level concerning the outcomes of family disputes involving bi-national couples. As a matter of fact, many petitioners allege that the German parent is systematically privileged in custody matters. We would therefore like to know if there are any statistics available that would give a clear picture on the concerns raised by petitioners that foreign nationals are systematically discriminated against? If not, are you envisaging to collect similar data in the future?

Moreover, we would also be interested in having an idea of:

- How many children are annually subject to *Jugendamt* measures/decisions?
- Which and how many associations, institutes and foundations (*freie Träger*) do have a working partnership with *Jugendamt*?
- How many employees (in total) do operate for the almost 700 *Jugendamt* offices and for the many NGOs which cooperate with the *Jugendamt* in relation to the protection of the German Kindeswohl?
- What is the total annual budget of each *Jugendamt* and is it publicly available?

On the basis of the assessment of the petitions received and debated within the PETI Committee, it appears that the *Jugendamt* is automatically a party to all cases where a minor is involved. It also appears that the *Jugendamt* is involved and is a stakeholder in the same way as the parents of children affected by these measures and may choose to act as guardian with or without the consent of the parents, even in the case they still both have their parental authority.

For this reason, the PETI Committee kindly invites you to reply to the following questions:

- Which local, regional or federal authority supervises the activities of *Jugendamt* offices?
- At which stage of the dispute is *Jugendamt*'s recommendation presented to the judge (i.e. *Empfehlung des Jugendamtes an das Familiengericht*)?
- Does the *Jugendamt* notify the parent affected by the aforementioned recommendation before the court hearing takes place and does a parent have the right to oppose the recommendation by the *Jugendamt* during court proceedings?
- Are the parents heard by *Jugendamt* before the hearing? Moreover, does *Jugendamt* compile a form of recordkeeping of these meetings and does the *Jugendamt* provide this form to the parents?

Moreover, the *Jugendamt* can decide on temporary measures related to the child before the execution of the judicial decision. This is notably the case when using the *Beistandschaft*, which is of concern to some of the petitioners. For this reason, the PETI Committee would like to have more precisions in relation to these measures and more particularly the *Beistandschaft*,:

- Is there any possibility for the parents to oppose the aforementioned measures?
- Who takes the decision to initiate a *Beistandschaft* and on the basis of which criteria?
- Is the action of the Judge a prerequisite for initiating a *Beistandschaft*?
- Can both parents request a *Beistandschaft* measure/decision prior to the decision of the judge on the custody of the child?
- On which criteria does the *Jugendamt* base its decisions when a *Beistandschaft* is launched?
- Is there a possibility to object a *Beistandschaft*? And if so, could this possibility suspend or cancel the *Beistandschaft*?

- Does the *Verfahrensbeistand* has any kind of contact with both parents before submitting the report to the Court?

The *Jugendamt* is responsible for implementing Family Court decisions and can interpret these decisions. The execution of the judicial decisions can at times be very long. What kind of safeguard measures are taken to prevent a potential breach of the right to enforcement of judgements within a reasonable period of time?

Finally, we would like to know whether the *Jugendamt* services are able to evaluate the performance of the judges in family cases.

- If this is the case, what are the measures put in place to ensure that this evaluation does not influence the career of the judges?

- Moreover, are there any available data specifying in how many instances the judge has taken a decision other than the one suggested by the *Jugendamt*?

Regarding the issue of the hearing of the child in family proceedings, children are interviewed from the age of three in Germany. In some other EU countries, they are considered to be too young and not mature enough to be consulted in disputes involving their parents. Therefore, we would like to know if the execution of the judicial decisions taken abroad is systematically refused by the German authorities in cases where children have not been heard (even at a very young age)?

Additionally, the hearing of the child is not recorded and the parents receive only a brief summary.

In this respect, could you please indicate:

- Who attends the hearing of a child?
- At what age can children be subject to a hearing?
- Why are the hearings of children not recorded?
- Would you consider to start recording these hearings, and if so, would you also consider releasing the recordings to all the parties involved?

Finally, the European Parliament has the duty to ensure that every EU citizens is treated in a non-discriminatory manner and can fully benefit from the fundamental rights and freedoms offered by the Treaties. By consequence, we would like to know if there is any kind of possibilities for foreign parents to obtain a specific help (such as translation assistance) during the proceedings so that to ensure that they are not disadvantaged in comparison to the German parents.

According to the petitions received, there are cases of non-German parents residing outside of Germany who have been asked to pay the translation expenses of the judicial documents sent from Germany. In light of the provisions of Regulation (EU) n. 1393/2007 of the European Parliament and the Council, of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) we are wondering why such a payment has been imposed?

Our committee would be very grateful if you could kindly reply to these questions and help us to better understand procedures relating to family disputes and their possible consequences for non-German EU citizens.

We are convinced that all the answers and clarifications you could provide will be of great help for the petitioners and by consequence will contribute to a better functioning of the European Union.

Yours sincerely,

CW

Reply from the German authorities

Federal Ministry
for Family Affairs, Senior Citizens, Women
and Youth

Caren Marks, MdB

Parliamentary State Secretary

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PLACE, DATE: Berlin, 31 March 2017

Dear Ms Wilkström,

I would like to thank you for your letter to the Federal Minister for Family Affairs, Senior Citizens, Women and Youth Manuela Schwesig and Federal Minister of Justice and Consumer Protection Heiko Maas dated 16 February 2017, which included a list of questions from the Petitions Committee of the European Parliament on the role of the Jugendamt in family court proceedings in Germany as well as an explanation of the background to these questions.

Ms Schwesig has asked me to reply to you after consulting and seeking the approval of Mr Maas. The enclosed replies give a comprehensive overview of the fundamental principles of the Jugendamt's activities and how the Jugendamt works with the courts, together with the statistical data you requested. For the sake of greater clarity, we have numbered the questions in order.

Yours sincerely,

Caren Marks

**Questions from the Petitions Committee of the European Parliament on the role of the
Jugendamt in child custody cases**

1. Could you please clarify the principles on which the work of the Jugendamt is based?

In accordance with Section 1 of Volume VIII of the Social Code, the overriding principle is that all young people have the right to have their development supported and to be raised to become independent and socially responsible adults. The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall (only) watch over them in the performance of this duty (Article 6(2) of the Basic Law). Youth welfare services should help young people in particular in their individual and social development, help them to avoid or eliminate discrimination, advise and support parents and legal guardians, protect children and young people from threats to their well-being and help create or maintain a family-friendly environment and decent living conditions for young people and their families. The tasks carried out by the Jugendamt within the framework of public youth welfare services are therefore manifold and range from giving pure advice and assistance and cooperating with authorities to providing reports to the authorities and taking measures which involve intervention. In principle, the Jugendamt cannot act against the will of the primary carer when conducting its activities. An exception to this is when a last-minute crisis intervention takes place because of an imminent threat to the welfare of a child or young person. However, longer-term encroachments on the parents' right to bring up their child always require a decision by a family court (see, for example, Section 42(3), line 2(2) of Volume VIII of the Social Code).

As municipal authorities, Jugendamt offices carry out 'statutory work'. They are therefore authorised to take action against citizens and provide services. The Jugendamt offices are thereby bound by law and statute in accordance with Article 20(3) of the Basic Law. Thus, when taking decisions they have to take all the legal positions, including those protected by the Constitution, of relevant parties (for example children and their parents) into consideration in a proportionate manner and

reconcile them as much as possible. Other key principles of the Jugendamt's work include its duty to take legal guardians' wishes and decisions into account (Section 5 of Volume VIII of the Social Code) when providing services and its commitment to fully involve primary carers, children and young people in the decision-making process and the provision of assistance.

2. In accordance with Section 1697a of the Civil Code, decisions must be made based on what is termed the Kindeswohlprinzip ('child welfare principle'). Could you please clarify what the definition of Kindeswohl is and its legal basis under German law? Does the term apply to the Vermögenssorge ('care for the property of the child') or to the Personensorge ('care for the person of the child')?

Kindeswohl ('child welfare') is the fundamental and guiding principle of the law relating to parents and children. It is the constitutional guiding principle for state oversight of parental rights (Ruling of the Federal Constitutional Court of 29 July 1959 - BVerfGE 10, 59, 82; most recently the Chamber decision of 3 February 2017). The term Kindeswohl refers to what is a vague legal concept. There is no law which defines this term. In reality, the term Kindeswohl must be interpreted on a case-by-case basis by means of criteria that have been developed through court rulings.

This requires the circumstances of the specific case to be taken into account, alongside the legitimate interests of those involved. As every child and every parent-child relationship is different, a law cannot be used to weigh up specific, individual considerations. In reality, the circumstances of the individual case need to be considered. For example, court rulings have incorporated various 'custody criteria' into the Kindeswohlprüfung ('child welfare evaluation') in custody proceedings, such as the Förderungsprinzip ('support principle'), the Kontinuitätsprinzip ('continuity principle') and the child's wishes and relationships. The latest research findings in the non-legal sciences (e.g. pedagogy and psychology) should also be taken into account when applying the law. Legislators cannot take into account and regulate all possible circumstances. In family law it is therefore not possible to dispense with vague legal concepts or provide a clear definition of these concepts.

Vague legal concepts which correspond to the concept of Kindeswohl can also therefore be found in other European legal systems as well as in international agreements. Kindeswohl is, however, specified as a fundamental principle in many specific legislative provisions, e.g. in Sections 1631b, 1631d (1), line 2 and 1634(4) of the Civil Code, which contain provisions relating to Personensorge ('care for the person of the child'). Section 1697 of the Civil Code acts as a catch-all provision and emphasises the importance of child welfare as a basis for decisions in all matters relating to custody and contact with children. It must therefore also be taken into account when taking decisions relating to the Vermögenssorge ('care for the property of a child') and the Personensorge ('care for the person of the child'), which both form part of the concept of parental custody.

3. Which article of the Civil Code (apart from Section 1626, in which the concept of parental custody is defined) contains a definition of custody? Which body takes decisions concerning the care for the property of the child? Is it the Jugendamt or the family court?

Section 1626 of the Civil Code explains the concept of parental custody and makes it clear that this includes both care for the property of the child and care for the person of the child. Section 1629 of the Civil Code indicates that parental custody also includes representing the child. The scope of care for the person of the child is outlined in Section 1631 of the Civil Code. Provisions relating to the care for the property of the child are in Section 1638 of the Civil Code. Decisions relating to the care for the property of the child within the framework of parental custody are taken by the family court.

4. Could you clarify how Bindungstoleranz ('tolerance of a spouse's relationship with a common child') is interpreted by the Jugendamt and by the other parties involved in family disputes?

The term Bindungstoleranz refers to the ability of parents, especially in disputes over the custody of a child, to project a positive image of the other parent and allow the child contact time with the other parent without there being tension. The parents' Bindungstoleranz can be an important factor in the custody decision.

5. How many children are subject to Jugendamt measures/decisions each year?¹

As the Jugendamt has overall responsibility for child and youth welfare services and in light of the objectives of child and youth welfare services listed under 1 above, in principle all children are directly or indirectly subject to Jugendamt measures and decisions. It is not possible to determine the number of children subject to specific measures. This is because statistics are only compiled for each sector. However, it is also because most relevant sectoral statistics only include the number of measures taken and not the number of children subject to them. Given the fact that there is a high degree of overlap between the different areas it is not expedient to make these calculations.

Which and how many associations, institutes and foundations (voluntary organisations) have a working partnership with the Jugendamt?

There is no statistical data relating to the number of voluntary organisations that the Jugendamt has a working partnership with.

How many employees (in total) work for the almost 700 Jugendamt offices and for the many NGOs which work with the Jugendamt to protect child welfare in Germany?

560 regional authorities have their own Jugendamt.² In order to determine the total number of employees, the concept of ‘protecting child welfare’ must be clearly defined and applied to all child and youth welfare services. Altogether there are 761 758 people working in child and youth welfare institutions, authorities and offices.³ If we exclude other forms of employment, altogether 709 738 of these are in the category of ‘employees, workers and officials’.

What is the total annual budget for each Jugendamt and are these figures public?

The official statistics relating to child and youth welfare services indicate the amount

¹ The statistical data for all sub-questions under question 5 comes from surveys carried out to collect the child and youth welfare service statistics which must be compiled in accordance with Section 98 of Volume VIII of the Social Code.

² These figures are for 2016. Source: Child and youth welfare services

³ Excluding technical/janitorial staff. Data from December 2014 (all areas apart from children’s day care) and March 2015 (children’s day

of money received by different levels of government, including the municipal level. More detailed data than that published by the Federal Statistical Office¹ can be obtained via the State Statistical Offices (for a fee). Data relating to individual municipalities is not confidential. In 2014 municipalities received a total of EUR 35 449 813 757. If this is divided among the 563 Jugendamt offices operating in 2014, the total per Jugendamt office was approximately EUR 63 million on average. The actual budgets differ considerably between Jugendamt offices depending on the number of people under the office's jurisdiction. In some cases, these budget differences are the result of state development programmes, through which, for example, the providers of child day care centres are partially financed directly by the federal states. Other differences are linked to the social structure of the population. The specific features of the local authorities in question must be taken into consideration when comparing municipal budgets across regions and blanket comparisons cannot be made.

6. Which local, regional or federal authority supervises the activities of Jugendamt offices?

The Jugendamt offices, as local providers of public youth welfare services, are part of the system of municipal (self-)government. Legal oversight of municipal government takes place at federal state level in order to examine the lawfulness of decisions made by the Jugendamt. Germany's federal system means that individual federal states decide which authority has legal oversight of the individual Jugendamt offices, and the authority chosen differs between states. There is no federal oversight of Jugendamt decisions. Federal law creates the provisions of Volume VIII of the Social Code pertaining to child and youth welfare services, which are then implemented by the states (Article 83 of the Basic Law). Obviously the federal government has regular discussions with the states about the scope and application of these provisions, whether in regard to the creation of new regulations or the application of existing ones. It is not possible for the federal government to influence specific decisions by Jugendamt offices because of the way powers are

care).

¹ Available at: <https://www.destatis.de/DE/Publikationen/Thematisch/Soziales/KinderJugendhilfe/AusgabenEinnahmenJugendhilfe.html>.

allocated by Germany's constitution. Decisions by the Jugendamt are justiciable. The parties can have these decisions reviewed by the relevant courts.

At which stage of the dispute is the Jugendamt's recommendation presented to the family court?

There are no procedural rules for the presentation of the Jugendamt's recommendation to the family court. It is, however, recommended that they follow the rules pertaining to the involvement of the Jugendamt in family court proceedings in accordance with Section 162 of the Act on Court Procedures in Family Matters and Non-Litigious Matters (FamFG Act). If the Jugendamt is involved or consulted, its recommendations are also presented to the family court.

Does the Jugendamt notify the parent affected by the aforementioned recommendation before the court hearing takes place and does a parent have the right to raise an objection to the Jugendamt's recommendation during court proceedings?

In accordance with Section 160 of the FamFG Act, the parents must be heard as part of the proceedings. At this hearing, parents naturally have the opportunity to comment on the opinion of the Jugendamt. If the court wishes to base its decision on the Jugendamt's opinion, the parties must be given the opportunity beforehand to comment on this (Section 37(2) of the FamFG Act).

Are the parents heard by the Jugendamt before the court proceedings take place? Does the Jugendamt document these meetings and make this data available to parents?

In accordance with Section 50(2) of Volume VIII of the Social Code, the Jugendamt shall inform the family court of, in particular, services that have already been offered and provided, support the development of the child or young person by incorporating educational and social considerations, and recommend other forms of (youth welfare) assistance. In child custody cases the Jugendamt shall inform the family court of the status of the consultation process by the date specified in Section 155(2) of the FamFG Act. As a rule, this requires the Jugendamt to offer advice and support to the parents or to try to offer them assistance before the court proceedings take

place. In order to arrange the necessary assistance, an assistance plan should be set up together with the primary carer and the child or young person which contains details of the type of assistance that is required and the services that need to be provided (see Section 36(2), line 2 of Volume VIII of the Social Code). The court is also informed on the basis of this assistance plan. There is no formal hearing on the opinion that the Jugendamt plans to present to the court. As the assistance plan is set up in conjunction with parents and they help decide on its scope, it is not necessary to make the plan available to parents. Requests for the publication of additional documentation are governed by the general rules pertaining to parties' right of access to social data, Section 83 of Volume X of the Social Code under the conditions of Section 61 of Volume VIII of the Social Code.

7. The Jugendamt can also take temporary measures related to the child before the execution of the judicial decision. This is notably the case when Beistandschaft ('legal advisership'), an important issue for many petitioners, is used. For this reason, the PETI Committee would like to obtain more detailed information about these measures and, in particular, the Beistandschaft.

Do parents have the opportunity to appeal against the aforementioned measures? Who takes the decision to initiate a Beistandschaft and what criteria is this based on? Does a judge need to act to initiate a Beistandschaft? Can both parents request a measure or decision on Beistandschaft prior to the judge's decision on custody of the child? What criteria does the Jugendamt base its decisions on when setting up a Beistandschaft? Is there the possibility to object to a Beistandschaft? If so, can this objection suspend or cancel the Beistandschaft? Does the Verfahrensbeistand have any kind of contact with the parents before submitting the report to the court?

Beistandschaft ('legal advisership') by the Jugendamt is regulated by Section 1712 of the Civil Code. It is a special way of legally representing an underage child. It is a voluntary form of support offered by the Jugendamt in accordance with Section 52a of Volume VIII of the Social Code to mothers in cases where the parents are not married. Only the Jugendamt can become Beistand ('legal adviser'). In accordance with Section 1712 of the Civil Code, the parent must send a written request to the responsible Jugendamt office in order to apply for legal advisership. The application

can be made by a parent who, for the area of responsibilities of the Beistandschaft applied for, has sole parental custody, or, if parental custody is held jointly by the parents, by the parent in whose care the child now is (Section 1713(1) of the Civil Code). The application is not subject to judicial scrutiny. The Jugendamt only checks whether the application is admissible or not. Beistandschaft is a form of assistance provided by the Jugendamt which is requested on a purely voluntary basis by the eligible applicant and begins once the application is received by the relevant Jugendamt. It does not require a separate judgment to be made. For this reason, it is not possible to challenge it. In accordance with Section 1715 of the Civil Code, the Beistandschaft ends when the applicant demands this in writing.

The Beistandschaft is limited to the tasks listed in Section 1712 of the Civil Code, namely the determination of paternity, the assertion of maintenance claims and the disposition of these claims. In relation to these tasks, the Jugendamt becomes a representative of the child alongside the parent who is authorised to represent the child. The Beistandschaft does not restrict parental custody. Furthermore, the Beistandschaft does not give the Jugendamt the right to carry out any activities other than representation in the aforementioned tasks.

The term Beistand ('legal adviser') within the meaning of Section 1712 of the Civil Code should not be confused with the term Verfahrensbeistand ('guardian ad litem'). A Verfahrensbeistand is appointed by the family court in cases where it is provided for by the law (see, for example, Sections 158, 167, 174 and 191 of the FamFG Act). The role of the Verfahrensbeistand is to identify the best interests of the child and assert these interests during court proceedings. This does not, however, make the Verfahrensbeistand the child's legal representative. The Verfahrensbeistand should inform the child about the subject, order and potential outcome of proceedings in an appropriate manner (Section 158(4), line 2(2) of the FamFG Act). The court can also ask the Verfahrensbeistand to talk to the parents and other carers of a child and help parties come to an amicable solution (Section 158(4), line 3 of the FamFG Act).

8. Finally, we would like to know whether the Jugendamt is able to evaluate the performance of the judges in family law cases.

If so, what are the measures put in place to ensure that this evaluation does not have

an impact on the career of the judges?

Moreover, is there any data about the number of cases in which the judge has taken a decision other than the one suggested by the Jugendamt?

The Jugendamt's involvement in family court proceedings is, as outlined in the reply to question 6, governed by Section 162 of the FamFG Act. According to this, the Jugendamt has the right to be consulted and involved. The Jugendamt thereby helps shed light on the circumstances of the case as part of the official investigation carried out by the court.

However, it is not the task of the authorities to evaluate the work of the courts. Any form of influence of the executive on the work of the courts or the careers of the judges working in them would be incompatible with the constitutional principle of judicial independence (Article 97(1) of the Basic Law).

The legal protection of parents, which is also a constitutional principle enshrined in Article 19(4) of the Basic Law, against an opinion of the Jugendamt is guaranteed through the legal remedy they are entitled to in accordance with the FamFG Act. The appeal court's review of the first ruling includes the investigation into the circumstances of the case, therefore the Jugendamt's opinion is part of the family court's investigations. However, we do not have any data on the number of cases in which court rulings were not in line with the assessment of the Jugendamt.

9. In Germany, children are heard from the age of three in family court proceedings. In some other EU countries, children of this age are considered too young and not mature enough to be consulted in disputes involving their parents.

Therefore, we would like to know if the German authorities systematically refuse to execute judicial decisions taken abroad in cases where children have not been consulted (even cases involving very young children).

In accordance with Article 23(b) of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation

(EC) No 1347/2000 (the Brussels IIa Regulation), judgments on parental responsibility are not recognised if they are made, except in urgent cases, without the child having been given the opportunity to be heard, in violation of the fundamental principles of procedure of the Member State in which recognition is sought.

National courts are obliged to hear the child in person if he/she is aged 14 or over. If the proceedings concern solely the child's property, a personal hearing is not necessary if such a hearing would not be appropriate due to the nature of the matter in question. If the child has not yet reached the age of 14, he/she should be heard if it is important to hear about the preferences, relationships or wishes of the child in order to make the decision or if a personal hearing is appropriate for other reasons (Section 159(1) and 159(2) of the FamFG Act). The Federal Constitutional Court has ruled that a court can ask to hear a child who is almost 3 years' old at the time of the decision or at least appoint a *Verfahrensbeistand* ('guardian ad litem') for the child. The wishes expressed by a very young child are therefore not, first and foremost, an expression of the child's right to self-determination. However, the hearing can give an indication of the child's relationship with a parent, which in turn should be taken into account when the decision is made (see Federal Constitutional Court's ruling of 26 September 2006, 1 BvR 1827/06, para 24). A hearing is compulsory apart from in exceptional cases. If a hearing is required, based on these principles, decisions taken abroad without a hearing will generally not be recognised in Germany (see, for example, *Rauscher*, in 'Europäisches Zivilprozess- und Kollisionsrecht', 4th edition, Article 23 Brussels IIa Regulation, para 8 - 9).

Accordingly, the Oberlandesgericht (Higher Regional Court) in Munich, for instance, considered that it was necessary to hear children aged 5 and 8 and therefore refused to recognise a judgment because a hearing was not carried out in the State of origin because of the child's age (Oberlandesgericht of Munich, judgment of 20 October 2014, 12 UF 1383/14, II.3.a).

However, if the judgment was made as part of a fast-tracked process, the fact that the child was not heard shall not prevent the judgment from being recognised in Germany (Federal Court of Justice (BGH), ruling of 8 April 2015--XII ZB 148/14-,

BGHZ 205, 10-22, para 46).

The hearing of a child is not recorded and the parents receive only a brief summary.

In accordance with Section 28(4) of the FamFG Act, a written transcript of the outcome of the child's hearing should be produced. The important elements of the personal hearing should be recorded in the notes. It is possible to create a note in the form of an electronic legal document.

Could you also please indicate
who attends the hearing of a child?

If the court has appointed a Verfahrenbeistand ('guardian ad litem') for the child in accordance with Section 158 of the FamFG Act, the personal hearing should take place in the presence of this person. Apart from that, it is at the court's discretion who attends the personal hearing (Section 159(4), line 4 of the FamFG Act). The court should create a positive and safe environment which allows the child to express his/her wishes and needs openly. It may, therefore, be necessary in some cases to hold the hearing without the parents and their legal representatives, as the child may come into conflict with his/her parents when making truthful statements and because the presence of the parents may affect the child's impartiality. The parents must, however, be notified of the outcome of the hearing in accordance with the principle of the right to a fair hearing.

Annex 5

- A. List of related petitions;
- B. Intervention of Maria Garzon, Director of FIBGAR;

Annex 5A

Number	Title		Language	Con. Countries
1013-12	on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
1201-12	on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
1209-12	on the theft of newborns at a hospital in Spain, and the failure of authorities to properly investigate the cases		Spanish	Spain,
1323-12	on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
1368-12	by E. M. G. (Spanish), on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
1369-12	by M. M. G. A. (Spanish), on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
1631-12	by M. C. G. H. (Spanish), on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
1772-12	by A. P.H. (Spanish), on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
1790-12	by A. B. S. (Spanish), on the theft of a newborn at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
0927-13	by E.C.U. (Spanish), on the theft of a new-born at a hospital in Spain and the failure of authorities to properly investigate the case		Spanish	Spain,
0758-13	by R. A. A. (British) on the actions of the Spanish police in a case involving the suspected kidnapping of the petitioner's child		English	Spain

Speech by María Garzón at the Working Group on Child Welfare Issues of the European Parliament

The Baltasar Garzón International Foundation (FIBGAR), of which I am a director, promotes historical memory and human rights programmes, championing the search for the truth so that victims may obtain justice, reparation and guarantees of non-recurrence.

The Foundation achieves its aims through research, through support for victims and institutions, and through education, telling young people throughout the country about our past history. We believe firmly in the importance of bringing the past to the present, because transitional justice mechanisms are important.

When speaking about the issue of stolen children we have to go back to when this first began, during the time of Francisco Franco's dictatorship.

The Parliamentary Assembly of the Council of Europe referred to this in its Declaration of Condemnation of the Franco Dictatorship 17 March 2006, as follows:

“Among the victims were the ‘lost children’ of Francoism. They were the babies and young children who after being removed from their imprisoned mothers, had their names changed so they could be adopted by regime families”. It continues: “Many thousands of working class children were also sent to state institutions because the regime considered their own Republican families ‘unfit’ to raise them ... There were also cases of child refugees who were kidnapped from France by the regime’s external ‘repatriation’ service and then placed in Francoist state institutions.”

The Council of Europe Declaration finishes by saying:

“The Franco regime spoke of the ‘protection of minors’. But this idea of protection integrated a link to punishment. The children had to actively expiate the ‘sins of the fathers’. Yet, at the same time, they were repeatedly told that they too were irrecoverable. As such, they were frequently segregated from other classes of inmates in state institutions and mistreated both physically, mentally and in other ways.”

Figures from Judge Baltasar Garzón's Court Order of 18 November 2008 put at 30 960 the number of children seized from their parents and handed over to ‘loyal’ families, with the aim, or at least the declared aim, of bringing them up in line with the principles of national Catholicism.

In this way their biological mothers could not create the conditions necessary for the ‘Marxist gene’ already present in their DNA to develop. A genetic anomaly passed on by their mother which, according to the explanation given by military psychiatric commander Antonio Vallejo-Nágera in his study ‘Eugenesia de la hispanidad y regeneración de la raza’ [The eugenics of Spanish characteristics and regeneration of the race], if not dealt with in time,

threatened to turn into an ‘alien’ and would make a carrier into a democrat, a republican and possibly, even a Marxist.

It is clear that these facts breach a number of articles in the Convention on the Rights of the Child, and particularly Articles 7 to 11 which deal specifically with the right to preserve one’s identity, to prevent separation against the will of the parents, and the obligation on states to fight such practices.

This is why as many as three UN agencies, including the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, have urged Spain to set up a DNA bank so that these children, now adults, may be sought and found and may recover their true identity.

Spain, as you know, has not yet implemented these recommendations.

Initiatives along these lines do exist, for instance that of April 2016 by the Justice Committee of the Spanish Congress, but none by our Government. Spain’s victims continue to wait and hope because they will never stop searching for an answer. As regards justice, for example, Franco’s victims, despite being the biggest victims group in our country (150 000 people who disappeared, over 30 000 stolen children), are not even recognised as such in the ‘Estatuto de la Víctima’ [Legal Status of Victim], which is why they have had to turn to the courts in Argentina.

In FIBGAR, we always remember that this problem was created by the state and that it should be the state that guarantees the rights of its own citizens.

I do not want to leave this parliament without making one important point.

Those of us in human rights organisations are surprised at how the EU institutions constantly reject petitions filed by Spaniards seeking justice on these issues. The EU institutions claim that these are domestic matters but both the nature of the deeds and the impossibility of obtaining justice in our country mean that they cannot be a domestic issue.

As I said at the start, our Foundation has worked since its inception to bring the past to the present, basing this on the importance of transitional justice mechanisms. The problem of stolen children is a clear example of how a practice that starts out as a systematic state plan conceived for ideological reasons can turn into a commercial one, a mafia maintained over time by institutions – in our case religious and medical ones – for more than 50 years.

Children continued to be taken away in our country until well after democracy arrived. We are in fact supporting a woman, Ruth Appleby, whose daughter was taken away at birth in A Coruña in 1992.

SIMILAR MODELS

Various victims associations, and in particular Francisco González Tena, with whom our Foundation works, put at 300 000 the number of people – that is, children and the children’s families – affected in total over the whole period.

When speaking with these associations and with other victims, it becomes clear that there are similarities between all these cases that show us how systematic this criminal practice was in our country. Mothers with limited means who, told their babies were dead, were not allowed to see the body, or if they were shown the body, this was only for a few seconds (a report by the magazine 'Interviú' revealed that in one hospital mothers were shown a frozen foetus kept for this purpose), non-existent death certificates, cemeteries that would not help with searches for remains, etc.

When many of us criticise our 'model transition' we only do so from a desire to stress that crimes as serious as those committed under a dictatorship should be made subject to a transitional justice process, and that the only way of ensuring that events such as these are not repeated is for justice, truth and reparation to be applied to the victims. Because of one thing you can be sure: it is not just the families who are the victims, but society as a whole.

The same questions constantly hound us:

How can it be that these mafias are allowed to continue operating in a democracy? Why do our authorities not see how important it is to resolve the problems of the past? To take pertinent steps? How can Europe permit it, that the rights of the victims are not guaranteed? If there are no guarantees of Truth and Justice, and scarcely any of Reparation, how then, tell me, can we guarantee there will be no Re-occurrence?

On behalf of our Foundation I ask you to consider this issue, to think about the power you hold and to issue a strong statement in support of these families who are searching for their children and these children who are searching for their identify. To make recommendations to Spain, because only international pressure will bring about a change in my country.

I am the mother of two small children; I intend that they will know our history, in order to understand the present and work for a future in a Europe that is fairer and more just for all. I and many Spaniards need to feel we can count on you for protection.

Thank you for your time and your interest.

Annex 6

A. List of related petitions;

B. Intervention of Ms Lena Hellblom Sjögren, Swedish psychologist.

Annex 6A

Number	Title		Language	Con. Countries
1140-14	by H. J. (Danish), on the rights of children in Denmark and Sweden.		Danish	Denmark, Sweden,
2434-14	by R. H. (Swedish), on behalf of the Nordic Committee for Human Rights (NKMR) on a report on child custody in Denmark, Finland, Norway and Sweden		English	Denmark, Finland, Sweden, Norway,

Annex 6B

Intervention of Ms Lena Hellblom Sjögren, Swedish

Some points for February 9 2017 in Brussels, by Lena Hellblom Sjögren

Introduction

I thank the Working Group at the European Parliament Petitions Committee for this opportunity to address you. As one of the signers of petition No 2434/2014 on behalf of the Nordic Committee for Human Rights (NKMR) I want to stress that the focus is to make you, and hopefully the rest of the world, aware that in Sweden there is an ongoing violation of the human right to family life on all levels, and that this is causing a lot of harm to children and families. It seems to me as if my society and my home state has forgot about Article 16 in the Universal Declaration of Human Rights 1948, (anecdotal information, also my birth year), stating:

“The family is the natural and fundamental group unit of society and is entitled to protection by society and by the State.”

A democratic state of law is based on human rights, rule of law and democracy. For candidate countries to be accepted in EU there must be institutions put in place guaranteeing this as well as institutions to protect minorities (Nowak, 2003 p 238).

Sweden has all this formally as you know. What about practice? It is from my experience as an investigative psychologist and researcher since the beginning of the 1990s that I want to make some remarks about human rights, rule of law and democracy.

Human rights

The EU-convention on Human Rights was incorporated in the Swedish law in 1995. In investigations regarding children and families made by the social services there is very, very rarely any mentioning of human rights. Referrals to the child's and other family members' right to family life is as rare. As this is not an issue in the investigations that the courts base

their decisions on, it is not an issue for the courts. The human right to family life, or the human right for the child to keep his/her identity is very rarely even mentioned.

The child's best interests is very often mentioned, both in the investigations made by the social serviced and in the court decisions. But there is no substantiated content given to the concept. The decisions based on what is stated to be the best interest of the child are often gratuitous. It is possible to define the child's best interests with reference to the basic need of the child to have love and acceptance to be able grow to a healthy whole person with empathy, and to the child's legal and human rights, but so far this general definition has not been put into practise:

The child's best interests is to be well enough cared for with love/acceptance from both parents (or those who are there for the child as parents and love the child), to have the right to close contact with both parents and their family networks and thus have the right to his or her identity respected, and to be able to speak out his or her opinion on matters concerning him or her freely, when mature enough and after having been informed with relevant impartial facts, without ever being pressured to choose between the parents (or those who are as parents).

Rule of law

The investigations, made by social workers (87 % of them female) with 3.5 years of a general education, with their recommendations, constitute the basis for verdicts regarding children's and families' future lives in the general courts (no specialized family or juvenile courts exist in Sweden). No experts are involved, except in rare cases where the social services has picked a doctor or a psychologist to make a statement, and in cases where a parent has afforded to have an expert involved to make an investigation. Often social workers from hear say information or a rumour make psychiatric diagnoses, such as Munchhausen Syndrome by Proxy. They do not have the expertise to make such diagnoses for mothers, or to or to state that a father is guilty of sexual or physical abuse, but they do. With such or some other unlawful base without any competent investigation they decide to protect the mother /father and child. Mothers and children are often placed in women shelters where the doctrine is to always believe mother's accusations.

The social workers, called social secretaries, are, according to the law regulating the social services, (Socialtjänstlagen, shortened SoL) free to interpret that law. They are also free to document what they consider relevant without any demands on authentic documentation, without any national guidelines and without any standardized methods for measuring how the child has experienced the mother's and the father's behavior (or the behavior of those who are as parents for the child), the well-being of a child and without any reliable methods for adequate risk assessments. BUT the social secretaries judge the children's well-being, the parents' behavior and also what they call risks for the child in the future. Thus they often recommend the parent whom they have sided with to be the sole custodian, and the other parent to stay out of the child's life (or have visitation rights with supervision), or they recommend the child (children) to be put in foster care (in Sweden ironically enough called family homes). Often the recommendations made by the social secretaries have been put in place, before the court hearing to decide about such measures as to forbid the child to have contact with one parent, or to be placed with foreigners in the foreigners' home .

This power given to (a growing number of female) authority professionals (the social secretaries) , who now more and more delegate the task of finding foster homes to private companies, some of them real big with global economical interests, put the fundamental Swedish law out of order. According to art 3 in Sweden's constitutional law all authority

application must be made impartial and with respect for matters of fact.

Democracy

The subjective recommendations, based on what the social secretaries or their colleagues think is important, hearsay, and arbitrary facts picked out depending on how they have sided (with the father or the mother, or with the foster home they have chosen) are given to a local political board, the social council, consisted of mostly free time politicians. This board in 98 % decide according to the social secretaries' recommendations. This formally democratic decision, based on what is by all actors considered to be a good enough investigation, is sent to the court. And the courts mostly decide in accordance what is said to be the investigation and recommendation made by the local social political board, thus formally fulfilling formal demands on democracy as the local politicians can be made responsible. The former individual responsibility for employees within authorities is abolished. The social secretaries, with an immunity that can be compared with diplomats' immunity, thus have no reason not to treat parents they do not like, if they like, with implacable arrogance and patronize them (and all others they do not like, or feel threaten their own prestige or power).

Summary

Human rights, rule of law and democracy – sadly enough these three pillars for a democratic state of law do not function properly in the Swedish every day practice in the authorities responsible for upholding these principals, the social services and the legal system.

Although the European Convention on Human Rights was incorporated in Swedish law in 1995 *the human right to family life*, and the right to a fair trial regarding family matters, is not applied in practice from what I have been able to see over my 25 years as an independent investigative psychologist and researcher.

There are lacking legal rights of the individual child, mother/father to defend their legal and human right to family life and to a fair trial. There is also a lack of laws for a parent, or two parents, who without a justified cause that has been confirmed by competent and impartial investigators, are declared as unqualified to take care of their child, and thus loose custody, and their right to defend the child's right to life, good enough care in all areas, education, the child's right to family life and to keep his/her identity. Thus *the rule of law* is largely set out of order.

What about *the democracy*? The social council with local (often free time) politicians are said to decide both about social investigations, and about legal custody, habitation, and visitation rights and about taking children into so-called compulsory care. This is only a formality, thus a sham democracy. All these matters are decided by the social worker in charge. Her (mostly a she) judgements, called recommendations, also constitute the foundation for the verdicts in court on these life - decisive matters (in 98 % of the cases). It is a system with a lot if arbitrariness: capricious decisions, defense of prestige/power and friendship corruption.

A suggestion

Manfred Nowak, expert on Human Rights and torture, has been appointed to lead "The Global Study on Children Deprived of Liberty. Moving towards effective implementation". In the press release dated 2017-02-01 I read : "The Study is a major enterprise and a key instrument of change which will finally check the status of the human rights of children being detained around the world."

Probably a State as Sweden and other Nordic States, considered to be well-functioning social welfare States governed by law fall out of the scope with reference to children in too many

states who are used as slaves and are being detained and thus deprived of all their fundamental rights and have no liberty. But the children held as you can say hostage ("Children held hostage" was the name of a book published in the US in 1991 by Clawar and Rivlin) in their father's/mother's home or in a foster home are deprived of their liberty in many ways, most of all by being mentally kidnapped; they often have their life stories rewritten and one parent, or both of them, pictured as really bad persons by the parent that has taken control, often with the support of the social services, or by the foster home picked out and paid by the social services. The children thus deprived of liberty cannot think for themselves, and my suggestion is that they would be included in the Study led by Manfred Nowak.

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Committee on Petitions
April 4, 2016
peti-secretariat@europarl.europa.eu

Stockholm 16 February. 2017

Dear Members of the Petitions Committee,

Again, I want to express my gratitude for inviting me to your Petition Committee.
As I understand it, I might have expressed myself too vague or without sufficient facts. First some self evident facts that I forgot to point out:

- There are children in need of protection from clearly observable damages and/or objectively confirmed harmful conditions.
- To place these children in need of love/acceptance and good care in homes with total strangers who get paid and take orders from the social services – and more and more from the consultants employed by the growing number Stock Market companies making profit in this field - may not be the best way to help these children.
- There are many good and very well-meaning social workers in Sweden.
- This should however not lead to the conclusion that children should be taken from their parents and extended family when a social worker thinks the child *might* be at risk.

Now, I would like to try to explain the background for the violation of the human right to family life that is taking place in Sweden on an everyday basis.

1. The social services reform, Law 1980:620, took on great significance for the larger part of the Swedish population. From then on the municipal social services fall under the regulation of a general targeted-oriented law, called the Social Services Act (SoL) which came into force on January 1, 1982.
2. This law is not detailed or precise. The employees within the social services, called social secretaries, are given the freedom to interpret this law which makes them responsible for the

inhabitants' well-being. This change has been characterized as making the citizens in the modern social welfare state into clients.

3. Another law introduced in 1990:52 called LVU, regulates when the state/society can take children into forced custody, called compulsory care.
4. This law is neither detailed nor precise, but rather generally targeted. The social workers are given the freedom to decide to take children by force from their mother/father or both. At the same time they are supposed to help and give advice to the families involved (two functions that ought not to be united).
5. The interpretations made by the social worker handling a case and her investigation and recommendations to the municipal social welfare board will be the decision of the local politicians sitting on this board, in almost 100 % of the cases. This is called the democratic decision of the municipal social welfare board.
6. This social council's decision then in almost 100 % of the cases constitutes the foundation for the Administrative Court's decision to take a child into forced custody.
7. The investigation made by the social worker is not well-founded as she (87 % females) has no reliable measures and no standardized methods to use, no national guidelines to follow, and no demands regarding how to make authentic documentation.
8. The social worker has a 3.5 year academic education, but no license to practice social work. She has no legal or professional responsibility and cannot be sued for malpractice as she has no established body of knowledge to fall back on and has been given the power to interpret the laws she refers to in her work.
9. You can summarize the results as malpractice within the social services being the rule, not the exception, as Article 9 in the Swedish Constitution law is not followed. The wording of this article is: "All work performed by authority professionals must be impartial and observe objectivity and impartiality."
10. Malpractice within the social services when children are removed from their families is the rule, not the exception. Article 8 in the European Convention of Human Rights was not included in the social workers' education, and it is not something the social worker refers to when doing her investigations.
11. Malpractice within the social services is the rule, not the exception, because the detailed and precise article in SoL, Article 5, is not followed. Article 5 stipulates that, for children who are considered to be at risk the social workers shall have as their primary consideration if the child can be received by a family member or other close relatives. The intention is that the child should not lose his/her family roots.
12. The social worker mostly lacks knowledge in areas of vital importance for making the investigations and the recommendations she is making; during her 3.5 years training she learns a little of everything, but not enough of anything that is required for a good enough practice.
13. The social worker has the power to ask a medical doctor, a psychiatrist, or a psychologist to investigate something the social worker wants to have investigated. She gives her interpretation of the problem to these experts, who - like the judges in the courts - think that the social workers have made thorough investigations and know the facts and have "weighed the pros and the cons". She then has the power to decide if she wants to include what the doctor/psychiatrist/psychologist has found - or not - in her investigation and as a basis for her recommendations.
14. The investigations made by the social workers are of two kinds: A. after reports of concern for a child, so called child investigations, B. when a court has asked for an investigation regarding custody, habitation and/or visitation, so called custody investigations. The social workers making the custody investigations often belong to a special division called "the Family Law Division", but they all belong to the municipal social services. Between colleagues they change information and also copy from each others' writings, thus making it very easy to

spread for example a false diagnosis, and biased hearsay information, that when repeated over and over again becomes the “truth” about a child or a parent.

15. As mentioned above, the social worker takes no consideration to the child’s or the parents’ human right to family life. As the human right to family life is a not existing materia in the investigations and recommendations by the social worker it is a matter of no concern for the courts that make their decisions based on the investigations and recommendations made by the social workers.
16. When a child is believed (is not obviously harmed/scared) to be in need of protection measures are often taken by the social services for such protection before any investigation is made. Before any physical, psychological or sexual abuse or some very harming life conditions, have been observed or found, the measure to place the child out of the child’s family, or, as is often the case, place a mother who claims the father has abused her and/or the children, together with the children in a women’s shelter, can in itself be very harmful and traumatic. Often the child has in these cases to break up from school and their usual life, and get treatment as being abused which is harming to the child if the child has not been abused. (There are no men’s shelters.)
17. When the social worker makes her investigation after having placed the child or the mother with the children in protection from the parent/-s believed to be dangerous they cannot, of course, find out how it is for the child to be with that parent/these parents in their daily life, due to the fact that the preconditions have been drastically changed. What is observed is thus the reactions to the changes made. The words spoken of the child in protection after mostly a lot of questioning by foster parents or helpers with preconceived ideas about what has happened in the past are often a repetition of what the child has heard in these questions, or if the child has been placed in a women’s shelter, by the other adults and children being protected in the same place. With this background the child’s will is not necessarily the real will of the child.
18. The research based knowledge that children placed in strangers' homes away from their own family are worse off than adopted children, but even worse off than children kept in their risky homes, seems not to be known. In a longitudinal study (1) of about 700 children diagnosed to be in need of being placed out of their risky home environment, about one third of them were placed in foster homes. Nearly one third of them were adopted and a little more than one third of them stayed in their risky homes. When, after several years, these children were followed up by looking at their school results, if they had been registered within psychiatric care, with drug addiction problems, or had been registered as criminals, and also if they had committed suicide the result was that the children left at home were best off. Second best on all these measurable variables were the adopted children. Worse off were the children who had been placed in foster homes.
19. Statistics tell us that children once placed in foster care are re-homed over and over again until they are 18 (sometimes 20) and that placed teenagers very often (in about 50 %) run away. To my knowledge there is no research showing that children are better off in life after having been placed in foster care. So why is this fact not considered when making risk assessments, and before taking decisions to remove a child from the child’s family? If there was a medicine that could cure cancer, but at the same time cause worse pain to the patient, would that medicine be prescribed with state support on a large scale?
20. In 2006 an “Abuse and Neglect inquiry” was appointed (officially: “The Swedish Inquiry on Child Abuse and Neglect in Institutions and in Foster Homes, 1930 - 1980”). In the final report (SOU 2011:63 /State Official Investigation 2011:63/) for the 866 persons interviewed about abuse and neglect that had occurred before 1980, 763 of the 798 who were placed in foster homes (96 %) told about abuse and neglect.

21. It is stated that "the contents of the files often lack an overall structure, uniform concepts and definitions". From what I have seen, these problems still exist. It is a fact that children in foster care are still being abused, not in the least psychologically, physically and heavily neglected regarding love/acceptance, school and medical care. 2.
22. Those who had suffered were officially given an apology by the State and were promised to be given some compensation. But it turned out that they had to make applications and document their suffering. Only half of the 5300 who made such applications passed the inquiries made by a special assigned authority, which has recently been criticized internationally. It was for example pointed out by Patricia Lundy, professor in Sociology, from Northern Ireland that the compensation procedures making only half of the applicants "qualified" for compensation have traumatized them a second time.
23. UNICEF, in their Innocenti Report Card 13 (2016): "Fairness for Children. A league table of inequality in child well-being in rich countries" has made comparisons of 35 countries regarding income, education, health and well-being. Sweden is low down in this league: Number 23. Nearly 20 % of the children have reported to have daily psycho-somatic health problems.
24. There has been a huge increase in the number of children being taken into the care of society. The total number 2014 was 31.952, according to the figures from the National Board of Health and Welfare, <http://www.socialstyrelsen.se/publikationer2014/2014-9-1>. About 10 people around every child is affected by anxieties, actions intended to result in a reunification which often leads to prestige battles where these individuals are powerless in comparison with the social workers using their authority position. But it also means that about 320 000 voters are affected...
25. Looking at the children taken from of a mother or a father who has done no harm to the child, but due to the other parent's alienation of the child driven by an implacable hostility, mostly with support from the social services, these are about approximately 2000 every year. With the same estimation of 10 affected family members and friends around every child this results in 20000 voters...
26. A new law, intended to make it even easier for the social services to take children into compulsory care, also the growing number of children diagnosed with neuro psychiatric problems, will soon be debated and passed in the Swedish Parliament. It is based on an official governmental investigation (SOU 2015:17) called "The rights of children and young in compulsory care. Suggestions for a new LVU." Some of us, who have insight to the fact that no one can be cured or helped in a good way by being violated to give up his/her family and be happy with some material goods given by tax money from the state to the foster families, or other pseudo care institutions, have argued for better solutions.
27. One such suggestion for a better solution is to unite the help/advice function within the social services with already existing, well spread and well-functioning Child Care Centers and Mother Care Centers with competent and well-trained medical professionals to Family Care Centers. At the same time the decisions about taking children into compulsory care would be taken by a separate and independent authority, or, as in many other countries, by a civil Court.
28. The present law (LVU, 1990:52) reads:
 "The care
 § 10 Care shall be deemed to begin when the young person, because of a decision on immediate custody or care has been placed outside their own home."
 However, the best help to any child who is deemed to be in need of help should be to receive help within his or her family. Separating a child from its parents and loved ones is traumatizing for the child, and should be used only when there is a serious threat to the child's health or life.

29. All assistance ought to begin in the family, to avoid breaking down the family, the corner stone for building a human society according to the UN declaration on human rights.

The European Court, Strasbourg, has repeated in its child care verdicts: "The State must unceasingly make efforts to re-unite the children with their families."

Verdicts for the reunification of children with their families are not implemented. Children are suffering. Parents are suffering. Grandparents are suffering. High suicide rates and deaths related to stress in families affected by the removal of their children and limitation of visiting rights have been noted, but it is difficult to have statistics because such statistics are not made.

30. The parents, grandparents and children whose human right to family life is being violated have formed different groups, for example Stolen childhood (not any more in existence after the compensation and apology from the State), Missed grandchildren, Free children, Father-child, National organization for family rights.

In Norway the Child Welfare Service (Barnevernet) has been accused of "state kidnapping." According to official statistics 1664 children were taken into forced custody in 2014; 424 of these children had mothers born abroad. We are a group of professionals who last year reported our concerns about Barnevernet, something that we now are following up. Mrs. Gro Hillestad Thune, formerly Norway's delegate in the European Commission on Human Rights and from whom I forwarded the message that the human right to family life is violated on an everyday basis in Norway, is also a member in this group.

I would be most grateful if you could send me a confirmation that you have received this letter and the Recommendation letter from Mrs. Siv Westerberg.

Very truly Yours.

Lena Hellblom Sjögren

Lena Hellblom Sjögren

1 Bohman, M. & Sigvardsson, S. (1980). A prospective longitudinal studies of children registered for adoption. *Acta Psychiatrica Scandinavica*, 61, 339-355.

2 Mattsson, Titti, Vinnerljung, Bo (2016). Barn i familjehem. Förslag på åtgärder som skulle göra skillnad för samhällets mest utsatta. *Children in family homes. Suggestions on measures that would make a difference for the children most in need in society*. "Family home" is the opposite of a foster home and confusing, as Stefan Carlsson has pointed out (1995, p. 74), but it is the word used for the homes with foreigners where children taken from their families are placed. In Mattsson&Vinnerljung you can find a lot of relevant and good references regarding the negative outcome of child welfare clients.