



2021/2060(INI)

31.1.2022

OPINION

of the Committee on Petitions

for the Committee on Legal Affairs

on the protection of the rights of the child in civil, administrative and family
law proceedings
(2021/2060(INI))

Rapporteur for opinion: Tatjana Ždanoka

PA_NonLeg

SUGGESTIONS

The Committee on Petitions calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

Child-friendly justice in civil, administrative and family law proceedings

1. Highlights the fact that the Committee on Petitions receives a large number of petitions concerning the need to hear children in court proceedings, the need for cooperation between Member States in cross-border child-related cases, the controversial role of the German Youth Welfare Office (*Jugendamt*) and other youth welfare agencies in the Member States, child custody disputes between parents from different Member States, domestic violence, and the promotion of professional and quality mediation by Member States;
2. Underlines that problems concerning the German family law system, including the controversial role of the *Jugendamt*, denounced through petitions by non-German parents, still remain unsolved;
3. Insists that courts, administrative bodies and social welfare institutions should make the best interests of the child a primary consideration when taking any decision concerning the child; stresses that such decisions should be made on an individual basis, taking into consideration the specific circumstances of the child and their family and avoiding conscious or unconscious bias;
4. Stresses that in order to make the best interests of the child a primary consideration of any judicial process concerning children, it is necessary for judicial proceedings to be flexible, effective and carried out in a reasonable timeframe;
5. Notes that while the Member States are obliged to establish procedural rules which govern the hearing of a child in different proceedings, these provisions differ and may vary greatly between the Member States;
6. Underlines that judicial proceedings have a considerable impact on the lives of minors and the absence of a child-friendly response can result in restrictions or violations of their fundamental rights; stresses that when national judicial systems lack child-friendly procedures and practices, the most vulnerable children, such as children with disabilities, face particular barriers to the enjoyment of their rights;
7. Recommends the establishment of minimum standards for the hearing of a child in national civil proceedings in accordance with Article 24 of the Charter of Fundamental Rights;
8. Considers that non-discriminatory access to justice should be guaranteed to all children, regardless of their social and economic background or origin, and independently of their parents or legal guardians;
9. Recalls that the authorities of the Member States must ensure that children are provided a real and effective opportunity to participate and to express their own views freely during any legal proceedings affecting them; highlights the need for their views to be

seriously taken into account in accordance with their age and maturity while at the same time taking appropriate measures to respect the child's emotional and physical integrity; stresses that this should apply unconditionally, whether in a cross-border dispute, in divorce proceedings, in family reunification or in the examination of an asylum application within the EU Member States;

10. Highlights that special consideration should be given to vulnerable children, such as children with disabilities, children in exile or unaccompanied children, who face additional barriers that prevent them from fully benefiting from access to justice;
11. Deplores the fact that language barriers frequently become obstacles to the healthy exercise of parental rights in the interests of the child and to the child's full enjoyment of their own rights;
12. Welcomes the Commission's publication of the EU policy framework to ensure the protection of the rights of the child¹, in particular the fourth pillar entitled 'child-friendly justice: an EU where the justice system upholds the rights and needs of children'; underlines the importance of providing adequate support for children before, during and after each hearing; stresses the obligation, as provided for in the Brussels IIa Regulation², for national authorities to recognise and enforce judgments delivered in another Member State in child-related cases;
13. Reaffirms the need for Member States to train child experts and professionals to accompany children throughout the judicial proceedings and calls on the Member States to ensure that these professionals are trained to inform children appropriately and to explain all elements of the proceeding in a child-friendly manner, which will help them to make informed decisions about their involvement in the judicial proceedings;
14. Stresses the need for justice professionals, including lawyers representing children, to be given specific training on the rights of the child and child-friendly justice in line with the European judicial training strategy for 2021-2024 and under the European Judicial Training Network (EJTN) and the European Training Platform of the European e-Justice Portal; calls on the Commission to encourage existing networks and platforms of legal professionals to exchange good practices on children's hearings, children's right to information and the right to privacy across the EU;
15. Calls on the Member States to ensure that only trained professionals carry out children's hearings and that ongoing training on children's hearings is mandatory for justice professionals; stresses that professionals hearing children need to be specifically trained in appropriate questioning techniques, in line with existing guidelines on hearing children and in accordance with relevant legislation; stresses the importance of promoting training and coordination among professionals and sharing best practices between the Member States;
16. Calls on the Commission and the Member States to provide sufficient allocation of

¹ Commission communication of 24 March 2021 on an EU strategy on the rights of the child (COM(2021)0142).

² Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003, p. 1.

funds in order to meet children's needs in all types of judicial proceedings and to make support services available;

An EU framework for the protection of the rights of the child in cross-border civil disputes

17. Points out that greater mobility within the EU has led to an increasing number of cross-border child protection issues involving custody removal and notes that cross-border proceedings are more complex from a legal perspective and usually more time-consuming and expensive; considers that in the light of Article 81 of the Treaty on the Functioning of the European Union, the Commission must play an active role in ensuring fair and consistent non-discriminatory practices in the treatment of cross-border child custody cases throughout the Union;
18. Underlines that the exercise of fundamental rights such as freedom of movement and freedom of residence must not be a threat to a child's rights; stresses that children involved in cross-border civil and family law disputes should enjoy the same rights and level of protection in all Member States, regardless of the nationality of their parents; recalls the fact that children whose parents exercise their right to freedom of movement have the right to maintain a personal relationship and direct contact with their parents on a regular basis, unless it is contrary to the best interests of the child;
19. Points out that although substantive civil law and family law are primarily the responsibility of the Member States, harmonised rules on cross-border civil and family law should be established at EU level; notes that this is particularly important in the case of rainbow families, as in the borderless Schengen area the definition of family members affects freedom of movement and constitutes an obstacle to family reunification;
20. Stresses that the lack of effective procedures for the enforcement of judgments in cross-border cases is detrimental to the best interests of the child; recalls the need to improve mutual judicial and administrative cooperation between Member State authorities in order to ensure mutual trust in matters concerning the recognition and enforcement of decisions and judgments adopted in family disputes with cross-border aspects involving children;
21. Notes that a large number of petitions indicate problems with the German family law system, including the controversial role of the *Jugendamt*, which has been denounced in a number of unresolved petitions by non-German parents; underlines that the Committee on Petitions continuously receives petitions by non-German parents reporting serious cases of discrimination as a result of the procedures and practices of the competent German authorities in cross-border family disputes involving children; points to the long-standing work of the Committee on Petitions on the treatment of petitions concerning the role of the *Jugendamt*; underlines that the Committee on Petitions continuously receives petitions concerning alleged discrimination against the non-German parent; calls on the Commission and the Member States to take account of Parliament's recommendations in its resolution of 29 November 2018 on the role of the *Jugendamt* in cross-border family disputes³;

³ OJ C 363, 28.10.2020, p. 107.

22. Notes that in some Member States, same-sex couples with children are frequently denied recognition of their legal parental status when crossing borders, which hinders the best interests of the child in legal proceedings; calls on the Commission and the Member States to rectify this discriminatory situation and to remove the obstacles faced by same-sex couples when exercising their procedural rights in family disputes with cross-border aspects involving children, including by facilitating mutual recognition of parenthood between Member States;
23. Invites the Member States to designate specialised chambers within family courts or cross-border mediation bodies to deal with cross-border child-related cases; stresses that it is pivotal to properly monitor the post-judgment situation as far as contact with the parents is concerned;
24. Calls on the Member States to pay greater attention to protecting children with disabilities by safeguarding their mental and physical welfare during court cases; calls, in this regard, for the removal of all obstacles that might cause discrimination and inequality due to a child's disability;
25. Calls on the Member States to guarantee regular visitation rights for parents unless it is detrimental to the best interests of the child, and to allow parents to use their mother tongue with their children during visits;
26. Reiterates its call for increased international cooperation amongst Member States and with third countries, in particular Japan, so as to implement all international legislation concerning child protection with the aim of protecting children from the harmful effects of parental child abduction;
27. Insists on the importance of Member States collecting statistical data on administrative and judicial proceedings concerning child custody and involving foreign parents in order to provide a detailed analysis of the current trends;

Mediation in cases concerning children

28. Recognises the important role that family mediation can play in resolving family disputes, including by providing a more child-friendly alternative to court proceedings; underlines that mediation in family matters should be organised on a voluntary basis and that if parties do agree to engage in mediation, the authorities of the Member State of jurisdiction should ensure access to mediation services;
29. Welcomes the launch of the AMICABLE project, supported by the Office of its Coordinator on Children's Rights, which aims to provide assistance for the cross-border recognition and enforceability of mediated family agreements in the EU and seeks to promote a tried and tested model for incorporating mediation into international child abduction proceedings in the EU;
30. Emphasises the importance of close cooperation and efficient communication between the different national and local authorities;
31. Deplores the absence of an EU or international legal framework to facilitate the recognition and enforcement of mediated agreements; calls on the Commission to

submit a proposal on cross-border mediation;

32. Calls for attention to be given to the need to ensure good-quality mediation and to harmonise or certify the training and qualification of family mediation services at EU level;
33. Calls on the Member States to facilitate access to legal aid for mediation in cases of cross-border family disputes for parents with limited financial means.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	27.1.2022
Result of final vote	+: 26 -: 4 0: 4
Members present for the final vote	Alex Agius Saliba, Andris Ameriks, Marc Angel, Margrete Auken, Alexander Bernhuber, Markus Buchheit, Ryszard Czarnecki, Tamás Deutsch, Francesca Donato, Eleonora Evi, Agnès Evren, Gheorghe Falcă, Emmanouil Fragkos, Malte Gallée, Gianna Gancia, Alexis Georgoulis, Peter Jahr, Radan Kanev, Stelios Kypouropoulos, Cristina Maestre Martín De Almagro, Dolors Montserrat, Ulrike Müller, Emil Radev, Sira Rego, Alfred Sant, Massimiliano Smeriglio, Yana Toom, Loránt Vincze, Michal Wiezik, Tatjana Ždanoka, Kosma Złotowski
Substitutes present for the final vote	Demetris Papadakis, Ramona Strugariu, Marie-Pierre Vedrenne

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

26	+
NI	Francesca Donato
PPE	Alexander Bernhuber, Agnès Evren, Gheorghe Falcă, Radan Kanev, Stelios Kypouropoulos, Dolors Montserrat, Emil Radev, Loránt Vincze
Renew	Ramona Strugariu, Yana Toom, Marie-Pierre Vedrenne, Michal Wiezik
S&D	Alex Agius Saliba, Andris Ameriks, Marc Angel, Cristina Maestre Martín De Almagro, Demetris Papadakis, Alfred Sant, Massimiliano Smeriglio
The Left	Alexis Georgoulis, Sira Rego
Verts/ALE	Margrete Auken, Eleonora Evi, Malte Gallée, Tatjana Ždanoka

4	-
ECR	Ryszard Czarnecki, Kosma Złotowski
ID	Markus Buchheit, Gianna Gancia

4	0
ECR	Emmanouil Fragkos
NI	Tamás Deutsch
PPE	Peter Jahr
Renew	Ulrike Müller

Key to symbols:

+ : in favour

- : against

0 : abstention