



24.6.2019

## NOTICE TO MEMBERS

**Subject: Petition 1655/2013 by L. B. (Latvian) on alleged discrimination in the United Kingdom on the grounds of ethnicity, religion and language**

**Petition 1707/2013 by S. K. M. (German), on behalf of Association of McKenzie Friends, on Abolition of Adoptions without Parental Confirm (forced adoption) over 2500 supporters**

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

**Petition 1852/2013 by M. Z. (Latvian) on alleged discrimination on grounds of nationality, religion and language in the United Kingdom**

**Petition 2287/2013 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**

**Petition 2473/2013 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**

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

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

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

**Petition 0063/2014 by J. I. (Lithuanian), on behalf of her daughter, on child**

## **welfare in the UK**

### **Petition No 0344/2014 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**

#### **1. Summary of petition**

##### **Petition 1655/2013**

The petitioner is a Latvian citizen. She alleges that the Local Authority isolated her daughter from her family and mother tongue (Russian) and that this had led to a delay in her daughter's development. She also accuses the authority of having alienated her from her religion (Russian Orthodox Church) by registering her as a "non-religion" child. The petitioner states that the actions of the authority is discriminating against her child on the grounds of ethnicity, religion and language, and thus violate EU law and in particular the Charter of Fundamental rights.

##### **Petition 1707/2013**

The petition is a part the campaign, not an individual case. The organiser is the Association of McKenzie Friends, located in London, which is a voluntary organisation campaigning to stop forced removal of children from their parents. Several petitions similar to this are on-going parallel. The petitioner is listing a number of issues, where she has identified problems or illegal actions, such as the family courts, police, the care business, social services, psychology and psychiatry, and hospitals and schools.

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

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

##### **Petition 1852/2013**

The wording of the petition is exactly the same as petition 1655/2013, but was tabled by the petitioner's daughter

##### **Petition 2287/2013**

The petitioner is a Lithuanian citizen who had come to the UK to work and study. Her daughter was taken away from her and put into a foster family, because the petitioner had a drinking problem. The social services promised her that if she successfully tackled her alcohol

problem the child would return home to her. Even though a hair strand test showed that her alcohol problem had been overcome the judge ruled that the test was not conclusive and the child could not return her. The petitioner complains that the child, who originates from a practicing Catholic family, had been placed in a vegetarian, non-religious English foster care family with completely different traditions and habits. The petitioner fears that the child eventually risk losing her nationality as well as the connections with her extended Lithuanian family and background. The petitioner considers that the UK authorities have not taken into account the child's national identity, language and religious beliefs (e.g. she could not do the Catholic communion). She claims that the actions of the UK authorities violate the European Convention on Human Rights.

### **Petition 2473/2013**

This petition contains further information on the subject matter of petition 2287/2013 and should not have been registered as a separate petition. The petitioner provides updates on the situation of her daughter and herself and reiterates her complaints against the UK authorities.

### **Petition 2498/2013**

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

### **Petition 2543/2013**

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

### **Petition 2546/2013**

The petitioner states that the police and Brent Social Services (in the United Kingdom) have taken her young son from her house without a court order. According to the social services, the child was not attending school. The petitioner says that this was because of the child's health and that in the meantime they had found a school near their home. The petitioner accuses an employee of the social services of using violence against the child's grandmother. The petitioner and her child are no longer living with the child's father because he was abusing the child. Because of threats by the father, the petitioner and her child left Lithuania and moved to the UK. The British social services, who had been informed of the situation,

nonetheless insisted on contact between the child and the father. The petitioner also complains that her son is no longer permitted to speak his mother tongue, Lithuanian, and that she is also not permitted to speak Lithuanian to him. The petitioner regards that as a breach of her human rights and those of her son. The petitioner also claims that her son is not receiving the medical care that he needs. Moreover, the British authorities want her and her son to return to Lithuania so that her son can resume contact with his father. The petitioner is accordingly seeking the assistance of the European Parliament.

#### **Petition 0063/2014**

The petitioner writes on behalf of her daughter who lives in London with her 6 year old son. In her letter the petitioner describes the process of taking a child away from the parent, without consent. She attaches a video link which records the visit of social workers accompanied by the police in the house of the petitioner's daughter, in London. The visit took place on 4 September and on 23 September the child was removed from the mother, by force. From the video provided it appears that the mother was too obstructive and unwilling to cooperate with the social services. The petitioner, on the other hand, believes that the police acted with brutality and unlawfully removed the child from the mother. She asks the EP for help.

#### **Petition 0344/2014**

The petitioner reports that she lived with her daughter in the United Kingdom. Her granddaughter Megan was born in April 2012, being a British and a Bulgarian citizen. The British authorities decided that Megan should be given to a person who, in the opinion of the petitioner, may be aggressive. The petitioner and her husband, as grandparents, requested that the British authorities give them the little girl, but their petition was rejected. The petitioner accuses the British authorities of the violation of the petitioner's fundamental rights and asks for the help of the European Parliament.

## **2. Admissibility**

Petition 1655/2013, 1707/2013, 1852/2013, 2287/2013 and 2473/2013 declared admissible on 19 March 2014.

Petition 1847/2013 declared admissible on 08 July 2014.

Petition 2498/2013 declared admissible on 23 October 2014.

Petition 2543/2013 and 2546/2013 declared admissible on 24 October 2014.

Petition 0063/2014 declared admissible on 19 December 2014.

Petition 0344/2014 declared admissible on 1 January 2015.

Information requested from Commission under Rule 216(6).

## **3. Commission reply to petition 1707/2013, received on 27 June 2014**

As already recalled during the meeting of the Petitions Committee on 19 March 2014, the Commission is aware of the specificity of the adoption policy in the United Kingdom. The UK is known for a continuing high rate of domestic non-relative adoptions, most of which now involve adoption from the childcare system of children with "special needs". A majority

of these are adopted without the consent of the birth parents. In these respects the pattern of domestic adoption in the UK is much more like the United States than mainland Europe, where the level of domestic adoption tends to be low and there are legal barriers to adoption without parental consent.

There is currently no European Union legislation on adoption, which is regulated by national laws and by some international Conventions.

Under the Treaties<sup>1</sup> on which the European Union is based, the European Commission has no general powers to intervene with the Member States. It can only do so if an issue of European Union law is involved.

The facts described by the petitioner relate to interventions by the relevant UK authorities on issues of parental responsibility and decisions on adoption as well as the placement of a child in foster care. However, EU law as it currently stands - notably Regulation (EC) No 2201/2003 ('the Brussels IIa Regulation') - only governs issues of jurisdiction and of recognition and enforcement of judgments given in another Member State. In particular, the granting of custody and visiting rights, the arrangement for their exercise and the role of the social and child protection authorities are not governed by EU law. Moreover, this Regulation explicitly excludes adoption from its material scope of application.

The Commission has recently launched a public consultation on the review of the abovementioned Brussels IIa Regulation (<http://ec.europa.eu/eusurvey/runner/BXLIIA>) which will also run until mid-July 2014.

Finally, it is possible to invoke the Charter of Fundamental Rights of the European Union only where Member States are implementing EU law, which is not the case here for the above mentioned reasons. In the absence of any link with EU law, it is for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations. The concerned parents should seek redress at the national level through the competent national authorities.

In case the parents concerned believe that the cases of adoption without parental consent may imply a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (for instance Art.8- Right to respect for private and family life), they may wish to address the European Court of Human Rights, after having exhausted all the domestic remedies available in UK and within six months of the domestic decision becoming definitive.

### Conclusions

In the light of the above, it is not possible for the European Commission to follow up on this issue.

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<sup>1</sup> Treaty on European Union and Treaty on the functioning of the European Union.

#### **4. Commission reply, received on 27 May 2014**

##### Petitions 2287/2013 and 2473/2013

The petitioner alleges that the conduct of the UK child welfare services in that they keep her daughter in long term care on the basis of an alleged alcohol problem of the petitioner violates Articles 6 (right to a fair trial) and 8 (respect for private and family life) of the European Convention of Human Rights (equivalent to Articles 47 and 7 of the Charter).

The Commission's powers regarding acts and omissions by Member States are related to overseeing the application of Union law, under the control of the Court of Justice of the European Union (cf. Article 17 (1) TEU).

On the basis of the information provided by the petitioner, it does not appear that in the petition as presented there were any specific acts of the UK child welfare services that are linked to the implementation of Union law.

Regarding the applicability of the Charter, the Charter does not apply to every situation of an alleged violation of fundamental rights. According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law.

In the petitions at stake, the UK child welfare services have only applied UK national law. There is no link with the application of EU law in the present case, and therefore the Charter does not apply.

This does not mean that there is a lacuna when it comes to fundamental rights protection in the UK. In such cases, it is for the UK, including its judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations.

The petitioner can seek redress at the national level through the competent national authorities, such as through an ombudsman or through the courts.

In addition, anyone who considers that her or his rights or freedoms guaranteed by the European Convention on Human Rights have been violated may lodge a complaint with the European Court of Human Rights after all domestic remedies have been exhausted.

Regarding the functioning of child welfare and child protection systems in the different Member States, the Commission is currently drafting guidelines to support Member States in strengthening their child protection systems. The objective of the guidelines is to find ways to promote and support an integrated approach, and facilitate cooperation and coordination among all agencies involved in child protection issues, with an emphasis on cross-border aspects. The guidelines are expected by autumn 2014.

In parallel to the preparation of the guidelines, the Fundamental Rights Agency of the EU is carrying out a mapping of national child protection systems in the 28 EU Member States. The mapping will be completed by June 2014, and the communication should be adopted in early autumn 2014, before the 2014 European Forum on the rights of the child.

##### Conclusion

Based on the elements provided in the petition, the Commission cannot pursue this case as the acts of the UK child welfare services in the present case do not fall within the scope of EU law.

**5. Commission reply,** received on 27 June 2014

Petitions 1655/2013 and 1852/2013

The petitioner alleges that the conduct of the UK child welfare services and the Local Authority, in that they have not allowed the petitioner to communicate with her child in her native language, which is Russian, during supervised visits, violates Art. 3 of the Racial Equality Directive and Articles 10, 22, 24, and 33 of the Charter.

As a matter of principle, the Commission's powers regarding acts and omissions by Member States are limited to overseeing the application of Union law, under the control of the Court of Justice of the European Union (cf. Article 17 (1) TEU).

On the basis of the information provided by the petitioner, it does not appear that in the petition as presented there were any specific acts of the UK child welfare services which related to the implementation of Union law.

Regarding the applicability of the Racial Equality Directive: acts of public authorities, such as taking a child into long term care, are not a 'service' in the sense of the directive, nor do they fall under 'social protection'. The latter should not be understood as covering the functioning of child welfare services, but rather as covering measures in the field of social security and healthcare.

Even though the petitioner belongs to the Russian speaking minority in Latvia, it is clear from the circumstances of the case that the alleged differential treatment did not take place on the ground of her belonging to this minority.

Even if it was to be considered that it is applicable to Russian speaking minorities, the Racial Equality Directive thus does not apply in the present case.

Regarding the applicability of the Charter, the Charter does not apply to every situation of an alleged violation of fundamental rights. According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law. Moreover, Article 6(1) of the Treaty of the European Union states that, “[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.”

In the petitions at stake, the UK child welfare services and the UK Local Authority have only applied UK national law. There is no link with the application of EU law in the present case, and therefore the Charter does not apply.

This does not mean that there is a lacuna when it comes to fundamental rights protection in the UK. In such cases, it is for the UK, including its judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations.

The petitioner can seek redress at the national level through the competent national authorities, such as through an ombudsman or through the courts.

In addition, anyone who considers that her or his rights or freedoms guaranteed by the European Convention on Human Rights have been violated may lodge a complaint with the European Court of Human Rights after all domestic remedies have been exhausted.

Regarding the functioning of child welfare and child protection systems in the different Member States, the Commission is currently drafting guidelines to support Member States in strengthening their child protection systems. The objective of the guidelines is to find ways to promote and support an integrated approach, and facilitate cooperation and coordination among all agencies involved in child protection issues, with an emphasis on cross-border aspects. The guidelines are expected by autumn 2014.

In parallel to preparation of the guidelines, the Fundamental Rights Agency of the EU is carrying out a mapping of national child protection systems in EU28. The mapping will be completed by June 2014, and the communication should be adopted in early autumn 2014, before the 2014 European Forum on the rights of the child.

### Conclusion

Based on the elements provided in the petition, the Commission cannot pursue this case any further, as the acts of the UK child welfare services in the present case do not fall within the scope of EU law.

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

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

### Removal from parental care/adoptions without parental consent

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

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

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

[http://www.adviceguide.org.uk/england/relationships\\_e/relationships\\_looking\\_after\\_people\\_e](http://www.adviceguide.org.uk/england/relationships_e/relationships_looking_after_people_e)

/children\_and\_local\_authority\_care.htm

In recent years the Commission has targeted funding under the rights of the child priority (Fundamental Rights and Citizenship Programme 2007-2013 and Rights, Equality and Citizenship Programme 2014-2020) at capacity-building for judicial and other practitioners (such as child protection professionals) and professionals on child-friendly justice and the child's right to be heard. When designing funding priorities, international standards are referenced to ensure that EU funding serves to better implement standards in Europe, namely the UN Convention on the rights of the child, the Council of Europe Guidelines on child-friendly justice and the UN Guidelines for the alternative care of children.

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

At a global level, more and more focus has been put on the need for a systems approach to child protection, to ensure that the system meets the needs of all children, rather than targeting systems at specific groups of children. With this in mind, the Commission plans to publish guidance on integrated child protection systems.

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

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

Principles will also address cross-border and transnational aspects, in particular the need to clarify roles and responsibilities, ensure a national focal point for cross-border aspects and to adopt procedures and/or protocols for any cross-border aspects.

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

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

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

#### Cross-border family disputes

In the area of family law the Brussels IIa Regulation (Council Regulation (EC) No

2201/2003) applies in such situations within the EU and was adopted with a view to taking into account the consequences of family break-ups. It introduces mechanisms for judicial cooperation between the EU Member States' authorities aiming at securing the principle of legal certainty with respect to jurisdiction and the recognition and enforcement of judgements. For example, it would apply in cross-border parental responsibility cases where a competent court has to be identified to hear the case or to a judgment concerning custody or access rights obtained in one Member State which needs to be recognised and enforced in another Member State. In contrast to this, the actual determination of custody or decision on placement of a child with a foster family including its conditions do not fall under EU competence as it concerns substantive family law matters. Substantive family law matters remain the sole responsibility of the Member States.

### Redress mechanisms

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

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

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

International standards do not preclude recourse to adoptions. Adoption without parental consent is one of the options for children without parental care, and it may be the best option for some children. The best interests assessment must be done on an individual basis, and the child's right to be heard must be respected. For countries that do not permit adoption without parental consent, children whose parents cannot care for them may spend their entire childhood in institutions and/or in foster care, often with multiple placements. In line with the Convention, adoption may be an appropriate long-term solution for a child.

### Article 24 Charter:

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

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

In determining the best interests of the child, the rights and legitimate interests of any other party (e.g. parents, other individuals, bodies or the state itself) should be taken into account.

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

When a best interests decision has to be made between various appropriate and viable options for a child, it should in principle favour the solution considered to be the most positive for the child – immediately and in the longer term. Any final decision should be thoroughly compliant with all other rights of the child.

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

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

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

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

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

Article 19 UNCRC – States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

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

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

The necessity principle (Is alternative care genuinely needed?) – includes prevention components around poverty, stigmatisation, discrimination, parent education, family support measures. Gatekeeping: ensure that children are admitted to alternative care only if all possible means of keeping them with parents or extended family have been examined.

Discourage recourse to alternative care, (gatekeeping, parental support, prohibit recruitment of children for placement in care, eliminate system for funding care settings that encourage unnecessary placements and/or retention of children in alternative care. Reviews of placements on a regular basis.

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

## Conclusion

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

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

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

## **7. Commission reply, received on 29 May 2015**

### Petition 0063/2014

The Commission has no general competence to act in matters of family law or child protection and is not in a position to comment on individual cases. In the same way, the Commission has no general powers to intervene with the Member States in the area of fundamental rights. It can only do so if an issue of European Union law is involved<sup>1</sup>.

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<sup>1</sup> According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law. For more information concerning the Charter and the circumstances in which it applies, you may consult the fundamental rights section of the website of the European Commission's Directorate General for Justice and Consumers - [http://ec.europa.eu/justice/fundamental-rights/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/index_en.htm).

On the basis of the information provided by the petitioner, it does not appear that the matter is related to the implementation of European Union law. Decisions by competent national authorities concerning parental responsibility and custody when there is no cross border element are not regulated by European Union law. EU law as it currently stands, in particular Regulation (EC) No 2201/2003 ('the Brussels IIa Regulation'), only governs issues of jurisdiction and of recognition and enforcement of existing judgments in another Member State.

*Redress mechanisms available to the petitioner:*

National authorities must ensure that their obligations regarding fundamental rights – as resulting from international agreements and from their internal legislation – are respected.

It is not clear from the petition whether national remedies have been exhausted. Any parent who feels that a custody decision is unjust or who considers that his or her rights were violated should first seek redress at national level. Information is available to citizens on how to obtain a remedy in its Member State on the fundamental rights section of the European e-Justice Portal<sup>1</sup>.

In addition, anyone who considers that her or his rights or freedoms guaranteed by the European Convention on Human Rights have been violated may lodge a complaint with the European Court of Human Rights (Council of Europe, 67075 Strasbourg Cedex, France<sup>2</sup>). Please note, however, that this Court may only deal with a complaint after all domestic remedies have been exhausted.

*Commission activities in the area of child protection:*

In recent years the Commission has targeted funding under the rights of the child priority (Fundamental Rights and Citizenship Programme 2007-2013 and Rights, Equality and Citizenship Programme 2014-2020) at capacity-building for judicial and other practitioners (such as child protection professionals) and professionals on child-friendly justice and the child's right to be heard. When designing funding priorities, international standards are referenced to ensure that EU funding serves to better implement standards in Europe, namely the UN Convention on the rights of the child, the Council of Europe Guidelines on child-friendly justice and the UN Guidelines for the alternative care of children.

At a global level, more and more focus has been put on the need for a systems approach to child protection, to ensure that the system meets the needs of all children, rather than targeting systems at specific groups of children. With this in mind, the 2015 European Forum on the rights of the child will focus on coordination and cooperation in integrated child protection systems, recalling key EU and international standards that should guide work in this area.

Conclusion

Based on the elements provided in the petition, the Commission cannot pursue this case, as the matter falls outside its competence.

The Commission would like to refer the petitioner to its joint answer to petitions 2013/1847,

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<sup>1</sup> [https://e-justice.europa.eu/content\\_fundamental\\_rights-176-en.do](https://e-justice.europa.eu/content_fundamental_rights-176-en.do).

<sup>2</sup> <http://www.echr.coe.int/ECHR>.

2013/2543, 2013/2546 and 2013/2498 and draw the petitioners attention to the fact that given the big number of petitions pertaining to custody decisions in England, it has written to the UK authorities on 15 December 2014 and requested information about the functioning of the English system. A response is still pending.

## **8. Commission reply, received on 29 May 2015**

### Petition 0344/2014

#### *Cross-border family disputes*

In the area of family law the Brussels IIA Regulation (Council Regulation (EC) No 2201/2003) applies to parental responsibility matters within the EU in cross-border cases so that it may cover cross-border cases of placement in a foster family or in institutional care or the guardianship, curatorship and similar institutions aiming at protecting the child. However, decisions on adoption, measures preparatory to adoption or the annulment or revocation of adoption are excluded from the scope of the Brussels IIA Regulation.

The Brussels IIA Regulation was adopted with a view to taking into account the consequences of family break-ups. It introduces mechanisms for judicial cooperation between the EU Member States' authorities aiming at securing the principle of legal certainty with respect to jurisdiction and the recognition and enforcement of judgments. For example, the Brussels IIA Regulation would apply in cross-border parental responsibility cases where a competent court has to be identified to hear the case or to a judgment concerning custody or access rights obtained in one Member State which needs to be recognised and enforced in another Member State. In contrast to this, the actual determination of custody or decision on placement of a child with a foster family or institutional care or guardianship measures including their specific conditions do not fall under EU competence as it concerns substantive family law matters. Substantive family law matters remain the sole responsibility of the Member States.

With respect to the facts described in the petition in question, no infringement of the Brussels IIA Regulation was identified.

In relation to the social assessment of the situation of the grandmother in Bulgaria which has been performed by a UK social worker appointed by the UK judge and which also included several visits to the home of the grandmother in Bulgaria as well as comprehensive interviews with her there, the Commission would like to recall that Regulation (EC) No 1206/2001 on taking of evidence<sup>1</sup> provides for the framework for taking evidence across Member States in civil and commercial matters. When interpreting the scope of this Regulation, the CJEU concluded that "the Regulation applies as a general rule only if the court of a Member State decides to take evidence according to one of the two methods provided for by that Regulation, in which case it is required to follow the procedures relating to those methods", and that "it does not govern exhaustively the taking of cross-border evidence, but simply aims to facilitate it, allowing use of other instruments having the same aim".<sup>2</sup> The CJEU pointed out, in

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<sup>1</sup> Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

<sup>2</sup>Judgment of the European Court of Justice in Case C-170/11 *Lippens and Others* ECLI:EU:C:2012:540,

particular, that a national court wishing to order an expert investigation which must be carried out in another Member State is not necessarily required to use the methods of taking of evidence laid down by the Regulation<sup>1</sup> in so far as it does not "affect the powers of the Member State in which it takes place, in particular where it is an investigation carried out in places connected to the exercise of such powers or in places to which access or other action is, under the law of the Member State in which the investigation is carried out, prohibited or restricted to certain persons"<sup>2</sup>.

Against this background and on the basis of the information provided, the Commission is not in a position to conclude that a violation of EU law is established in the case at hand in relation to the taking of evidence. Being aware of the importance of bringing legal certainty in that crucial area, an evaluation of that Regulation, and in particular on its mandatory nature, is currently being conducted by the services of the Commission. A report on this matter is scheduled to be published in the course of 2015.

*Regarding the alleged infringement of the free movement rights of the petitioner*

Regarding point 2 which relates to the allegation that the petitioner's free movement rights have been violated as she was obliged by the UK authorities to sign an agreement that she would not leave the UK while she took care of her granddaughter, the Commission underlines that the fundamental right to move and reside freely within the EU cannot be renounced by EU citizens. In the absence of any details as to the nature of the agreement between the petitioner and the UK authorities, the Commission considers that the petitioner agreed to be present in the UK and to act as guarantor of her new-born granddaughter's well-being so the baby could remain home with her parents. Otherwise, without the petitioner's commitment to remain with her granddaughter and act as her granddaughter's guardian she would have to be placed in care by the UK authorities. The grandmother's free movement rights would not appear to have been infringed as she could have left the UK at any moment. Indeed, when the petitioner had to go back to Bulgaria to take care of her children, her daughter and granddaughter were then moved to protective foster care.

*Regarding the applicability of the Charter to the facts as stated in the Petition*

The petitioner invokes several Charter articles and holds that these Charter articles were violated by the UK. It is important to note that, unlike the European Convention of Human Rights, the Charter does not apply to every situation of an alleged violation of fundamental rights. According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law. Moreover, Article 6(1) of the Treaty of the European Union states that, "[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties."

Thus, in those cases where the Member States do not implement Union law, the Charter does not apply and the Commission cannot make an assessment of whether it has been violated.

In the present case, the decisions of the UK courts which the petitioner complaining of have

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paragraphs 28 and 33; Judgment of the European Court of Justice in Case C-332/11 *ProRail BV* ECLI:EU:C:2013:87, paragraphs 42 and 46.

<sup>1</sup> Judgment of the European Court of Justice in Case C-332/11 *ProRail BV* ECLI:EU:C:2013:87, paragraph 49.

<sup>2</sup> Judgment of the European Court of Justice in Case C-332/11 *ProRail BV* ECLI:EU:C:2013:87, paragraph 47.

been taken in application of national substantive family law. By adopting those decisions the UR courts neither discharged an obligation under EU law nor granted judicial protection regarding rights conferred by the Union's legal order. Hence neither the substantive rights guaranteed by the Charter nor Article 47 thereof are applicable.

### Commission activities in the area of child protection

In recent years the Commission has targeted funding under the rights of the child priority (Fundamental Rights and Citizenship Programme 2007-2013 and Rights, Equality and Citizenship Programme 2014-2020) at capacity-building for judicial and other practitioners (such as child protection professionals) and professionals on child-friendly justice and the child's right to be heard. When designing funding priorities, international standards are referenced to ensure that EU funding serves to better implement standards in Europe, namely the UN Convention on the rights of the child, the Council of Europe Guidelines on child-friendly justice and the UN Guidelines for the alternative care of children.

At a global level, more and more focus has been put on the need for a systems approach to child protection, to ensure that the system meets the needs of all children, rather than targeting systems at specific groups of children. With this in mind, the 2015 European Forum on the rights of the child will focus on coordination and cooperation in integrated child protection systems, recalling key EU and international standards that guide our work.

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

Bearing in mind international standards, the Commission underlines the importance of clear and evolving guidance to social workers and child protection workers on measures to safeguard the child's rights and in particular the child's best interests. On 15 December 2014, the Commission wrote to the UK authorities asking for clarifications in general terms on safeguards in place to avoid discrimination against non-UK EU parents and their children, on safeguards to guarantee the best interests of the child, on information provided to parents and children on the role of social services, on situations where the use of English might be imposed during access visits, or the use of other languages prohibited, etc. A response is still pending.

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

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

International standards do not preclude recourse to adoptions. Adoption without parental

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

consent is one of the options for children without parental care, and it may be the best option for some children. The best interests assessment must be done on an individual basis, and the child's right to be heard must be respected. For countries that do not permit adoption without parental consent, children whose parents cannot care for them may spend their entire childhood in institutions and/or in foster care, often with multiple placements. In line with the Convention, adoption may be an appropriate long-term solution for a child.

*Article 24 Charter:*

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

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

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

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

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

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

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

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

are eligible.

Article 19 UNCRC – States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

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

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

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

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

### Conclusion

From the information provided the Commission is not in a position to take action in regard to the situation of the petitioner.

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

Currently, the Commission is reviewing the Brussels IIa Regulation which applies in cross-border cases of parental responsibility. It has adopted a report on how it has been applied in practice and it is collecting statistics on the implementation of the Regulation by the Member States which will help taking the decision as to which amendments and other actions should be proposed to make the application of the Regulation more effective, including enhancing the best interests of the child and in the interaction with child welfare authorities. In the context of the ongoing review of the Brussels IIa Regulation and of the ongoing assessment of the Taking of evidence Regulation, the Commission will take account insofar as it is appropriate in the context of the nature of the instrument of some of the elements raised in this petition in the area of cross-border judicial cooperation.

**9. Commission reply (REV), received on 2 May 2017**

Petition 0063/2014

The new information received from the petitioner does not bring any new elements. Therefore, the conclusions contained in the previous reply remain valid.

**10. Commission reply (REV), received on 24 June 2019**

This communication refers to the “Follow-up to the Fact Finding Visit (FFV) to London (5-6.11.2015) concerning adoptions without parental consent” and in particular on the recommendations addressed to the Commission, as well as the specific questions raised by Member of the European Parliament Ms Mizzi.

The Commission’s observations

Substantive family law issues do not fall under Union competence. These matters, governed by national law, are the sole responsibility of the Member States and the Commission may not monitor their application by national courts.

Regarding the FFV recommendation on research on the psychological effects of adoptions on children and keeping in mind that adoption is a national competence, the Commission has not undertaken any research and does not have any data on the effects of adoption in Member States.

Some data can be found in a 2009 study commissioned by the European Parliament on “International adoption in the European Union”. In this study, it is recalled that the United Kingdom is the only Member State where the number of adoptions without consent is considerably high in comparison to mainland Europe. Studies on child protection systems, such as the “Guardianship systems for children deprived of parental care in the European Union”<sup>1</sup>, “Guardianship for children deprived of parental care”<sup>2</sup>, or “Mapping child protection

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<sup>1</sup> <https://fra.europa.eu/en/publication/2015/guardianship-children-deprived-parental-care>

systems in the EU”<sup>1</sup> conducted by the Fundamental Rights Agency (FRA) provide further information on this topic.

Article 101 of the proposed recast of the Brussels IIa Regulation<sup>2</sup> provides that Member States shall collect, where available, certain data in matters falling within the scope of the Regulation. However, this will not include data collection in all family law matters, but is limited to matters falling within the scope of the Regulation such as numbers of decisions, applications for enforcement and refusals of recognition and enforcement under the Regulation. The recast Regulation is due to be adopted in 2019.

As regards the question on information on the national family courts systematically implementing the Vienna Convention on Consular relations at the early stage of child care proceedings and on whether the Embassies or Consular representations are informed in a timely manner about cross-border cases involving their nationals, there is currently no systematic involvement of consular authorities in cases concerning cross-border child care within the EU. It has to be borne in mind that competence to take any measures primarily lies with the Member States of the child’s habitual residence, as the case is considered purely domestic (even if the child has foreign roots or a foreign nationality).

Nevertheless, with regard to the placement of a child in foster care with relatives in another Member State, the Brussels IIa Regulation recast has created some new structures to facilitate cooperation between national authorities in cases where the court is aware of a closer connection of the child with another Member State. In this context, a recital to be added to the text of the recast will make specific reference to a notification to the Consular body of that Member State, where point (b) of Article 37 of the Vienna Convention on Consular Relations is applicable.

Finally, regarding the recommendation concerning the guidelines on coordination and cooperation on integrated child protection systems, the Commission highlights that the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> European Fora on the rights of the child focused on coordination and cooperation in child protection systems, recalling key EU and international standards that guide the Commission’s work. The background paper for the 9<sup>th</sup> Forum included 10 principles for integrated child protection systems<sup>3</sup>. These principles cover, among others, the need to strengthen prevention measures to avoid, as far as possible, the separation of a child from their parents, as well as the need for the national child protection systems to coordinate and cooperate among themselves.

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<sup>2</sup><https://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship>

<sup>1</sup> <https://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu>

<sup>2</sup> 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, repealing Regulation (EC) No 1347/2000, *OJ L 338, 23.12.2003, p. 1–29*.

<sup>3</sup>[https://ec.europa.eu/info/sites/info/files/10\\_principles\\_for\\_integrated\\_child\\_protection\\_systems\\_en.pdf](https://ec.europa.eu/info/sites/info/files/10_principles_for_integrated_child_protection_systems_en.pdf)

In recent years, the Commission has targeted funding under the Rights, Equality and Citizenship programme at building capacity for the judiciary and other practitioners, including child protection professionals and professionals on child-friendly justice. When designing funding priorities, international standards are included as a guide, together with the 10 principles on integrated child protection systems.

### Conclusion

The Commission cannot pursue the matter raised in the petitions, as it falls outside its competence. The Commission will continue to prioritise capacity-building on rights of the child for judicial and child protection authorities.