



13.2.2024

NOTICE TO MEMBERS

Subject: Petition No 1122/2023 by R.R. (Polish), on behalf of Patriot24.net, on alleged violation of the human and civil rights of Polish parents and children in Denmark

1. Summary of petition

The petitioner alleges that Denmark is violating human rights, citizens' rights, and the rights of Polish parents and children since social services are isolating children from their parents. The petitioner claims that Danish social services separated two Polish mothers from their children and then, without valid reasons, refused to authorise a stable relationship between them, ultimately affecting the child's mental well-being. Moreover, the petitioner emphasises the differences between the Polish and Danish systems, noting that the former allows daily video contact and prolonged stays for parents with their children before returning them to foster care. Finally, the petitioner raises concerns about the risk of children being isolated from their families in Denmark without a court decision. Thus, the petitioner calls upon European institutions to initiate an investigation against Denmark to safeguard the rights of parents and children and to uphold the rule of law in the country.

2. Admissibility

Declared admissible on 6 December 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 13 February 2024

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

The prevention of child abductions and the regulation of cross-border issues related to parental

responsibility are essential parts of the EU policy to promote the rights of the child and core features of EU judicial cooperation. The Commission is strongly committed to protecting the rights of children, as stated in Article 3(3) of the Treaty on European Union and enshrined in the Charter of Fundamental Rights of the EU. The Commission reaffirmed its commitment to protect and promote the rights of the child in the 2021 EU Strategy on the rights of the child¹.

The Commission does not know the full details of the case presented by the petitioner and is therefore not in a position to draw definitive conclusions. In the oral presentation of the petition, the petitioner mentioned that, in one of the cases, a European arrest warrant was launched against the parents, who took the child from Denmark to Poland. On the basis of the information provided by the petitioner, it does not appear that, in the matters referred to, the Commission has competence in these matters. Concerning matters of parental responsibility and visiting rights, EU family law is aimed at solving cross-border disputes and is limited to common rules on jurisdiction and the recognition and enforcement of an existing judgement in another Member State. The granting of custody or visiting rights, the arrangements for their exercise, the role of the social and child protection authorities in them and the day-to-day administration of justice systems of the Member States are not governed by EU law, but by national law.

European Union law, notably Regulation (EU) No 2019/1111 (the Brussels IIb Regulation), which entered into application on 1 August 2022 and which replaced Regulation (EC) 2201/2003 (the Brussels IIa Regulation), applies only in parental responsibility cases with a cross-border element. The focus of the new rules on judicial cooperation in relation to parental responsibility, introduced by the Brussels IIb Regulation, is on the protection of the best interests of children as a primary consideration in all civil proceedings affecting them. This Regulation provides enhanced protection for children and aims to facilitate cross-border procedures for families, including by simplifying and streamlining the processes for the return of abducted children. The 1980 Hague Convention², which complements the Brussels IIb Regulation, also seeks to shield children from the detrimental effects of abduction and retention across international boundaries by establishing a procedure for their prompt return.

Both instruments have established a cooperation mechanism and instituted central authorities to facilitate collaboration on the child's return, as well as on access rights in cross-border cases, providing assistance to the parties involved.

Moreover, the Brussels IIb Regulation applies to all Member States except Denmark, pursuant to Protocol No. 22 on the position of Denmark annexed to the EU Treaties, and consequently it would not apply to the petitioner's case.

Article 24 of the Charter of Fundamental Rights stipulates that every child shall have the right to maintain contact with both his and her parents, unless this is contrary to his or her interests. However, 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 EU 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

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021DC0142>

² Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - <https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction>

defined in the Treaties.’ In the petition at stake, the Danish authorities would have applied national laws, and no link with EU law can be established.

Importantly, the Commission has no general powers to intervene in individual cases of possible rights violations, which are set in a purely national context and have no link with EU law.

The petitioner has also suggested that a debate on the rule of law in Denmark should be started. The Commission is closely monitoring developments related to the rule of law in all Member States, including in Denmark, in the context of the annual Rule of Law cycle, with the annual Rule of Law report at its centre. The 2023 Rule of Law report was adopted on 5 July 2023 and includes a country chapter on all Member States, including Denmark. The Rule of Law report is the basis for exchanges on Member States’ rule of law situation in the European Parliament and the Council as well as in national parliaments.

In the matters referred to in the petition, it is for the Member State concerned, including its judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with its national legislation and international human rights obligations (such as the United Nations (UN) Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms). In accordance with these conventions, Member States must ensure that, in all actions relating to children, the child’s best interests are a primary consideration. The petitioner may wish to seek redress at the national level through the competent national authorities, such as through an ombudsman or through the courts, at appeal level.

As regards the European arrest warrant, this is an entirely judicial procedure between judicial authorities in the Member States based on the particular circumstances of each individual case where surrender is requested. Neither the Commission nor the Member States’ governments can interfere or influence decisions taken by judicial authorities.

Conclusion

Based on the elements provided by the petitioner, the Commission cannot pursue these cases, as the matters fall outside its competence. The petitioner can bring these cases to the national authorities including the judiciary and, if they consider that any of their fundamental rights or of the children’s’ fundamental rights have been violated, they may lodge a complaint with the European Court of Human Rights, after domestic remedies have been exhausted, whilst he can also file a complaint at the UN Committee on the Rights of the Child. As regards the European arrest warrant, the Commission is not in a position to follow-up on this issue, as the European arrest warrant is an entirely judicial procedure between the judicial authorities in the Member States and neither the Commission nor the Member States’ governments can interfere or influence decisions taken by judicial authorities.