Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 18/01/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 562 votes to 16, with 43 abstentions, in line with the consultation procedure, a legislative resolution on the proposal for a Council regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction (recast).

The European Parliament approved the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission subject to the following amendments:

General objectives of the recast: Parliament pointed out that the amendments introduced by the recast of Regulation (EC) No 2201/2003 shall:

- **help to strengthen legal certainty** and increase flexibility, help to ensure that access to court proceedings is improved, and that such proceedings are made more efficient;
- enable Member States to retain full sovereignty with regard to substantive law on parental responsibility;
- ensure the non-discriminatory nature of the procedures and practices used by the competent authorities of the Member States to **protect the best interests of the child** and the related fundamental rights;
- guarantee the respect for the rights set out in the **Charter of Fundamental Rights of the European Union**, and especially the right to an effective remedy and to a fair trial, as well as the right to respect for private and family life, and the rights of the child.

Members stressed the need to ensure that court judgments handed down in one Member State are **recognised** in another Member State and that they be recognised throughout the European Union, especially in the interests of children.

Jurisdiction rules: jurisdiction rules shall also be applicable to all children who are present on Union territory and whose habitual residence cannot be established with certainty. Parliament proposed extending the scope of such rules in particular to cover **refugee children** and children who have been internationally displaced.

Jurisdiction over parental responsibility: the Regulation shall prevent a child from being taken to another country in order to avoid a potentially unfavourable decision of the authorities. Pending proceedings relating to custody and access rights shall be concluded by means of a final decision so that persons entitled to custody do not remove a child to another country in order thereby to avoid an unfavourable decision by an authority, unless the parties agree that the pending proceedings should be brought to an end.

The designated judges shall be practicing and experienced **family judges**, in particular with experience in matters having a cross-border jurisdictional dimension.

That authority shall ensure the equal treatment of the parents involved in the proceedings, and shall ensure that they are thoroughly informed without delay about all the measures in question, in a language they fully understand. The best interests of the child shall always be taken into account.

Right of the child to express an opinion: this right shall be exercised in accordance with the national procedural rules, the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child. The hearing of a child shall be **conducted by a judge or by a specially trained expert**, without any pressure, in particular parental pressure, in a child-friendly setting appropriate for his or her age in terms of language and content and shall provide all the guarantees that allow the emotional integrity and the best interests of the child to be protected. It shall not be conducted in the presence of the parties to the proceedings or their legal representatives, but shall be recorded.

Mediation: the amended text emphasised that, as a result of the recent migration inflows, mediation has often proven to be the only legal means to help families reach an amicable and prompt solution on family disputes.

In this context, the judicial and administrative authorities shall provide assistance to the parties before and during the court proceedings with regard to the selection of mediators or the organisation of mediation. The parties shall be provided with financial assistance to carry out the mediation at least to the extent to which they have been granted or would have been granted legal aid.

Procedure for the return of a child: Members pointed out that when a judicial authority has ordered the return of the child, it shall notify the central authority of the Member State of the habitual residence of the child prior to the wrongful removal of such decision and the date upon which it takes effect.

Cooperation in cases concerning parental responsibility: the central authorities should take all appropriate measures to inform the holders of parental responsibility about legal aid and assistance, such as assistance provided by specialised bilingual lawyers, in order to prevent holders of parental responsibility from giving their consent without having understood the scope of that consent.

Where matters of parental responsibility are under scrutiny, the central authority of the Member State where the child is habitually resident shall inform, without undue delay, the central authority of the Member State of which the child or one of the child's parents is a national on the existence of proceedings.

Placement of the child in another Member State: where an authority of a Member State considers the placement of a child with family members, in a foster family or in an institution in another Member State, it shall obtain the **consent of the competent authority** of the Member State in which the child should be placed before ordering the placement.

Member States shall guarantee parents right of regular access, except where this would jeopardise the wellbeing of the child.

If the competent authority intends to send **social workers** to another Member State in order to determine whether a placement or adoption there is compatible with the well-being of the child, it shall inform the Member State concerned accordingly.

Training: Parliament stressed the need to enhance judicial training, especially in cross-border family law, to improve judicial cooperation in civil matters with cross-border implications. Training activities, such as seminars and exchanges, are required at both Union and national level, in order to raise awareness of this Regulation, its content and consequences, as well as to build mutual trust among Member States as regards their judicial systems.