Resolution on the role of the German Youth Welfare Office (Jugendamt) in cross-border family disputes

2018/2856(RSP) - 29/11/2018 - Text adopted by Parliament, single reading

The European Parliament adopted by 580 votes to 18 with 36 abstentions a resolution tabled by the Committee on Petitions on the role of the German Youth Welfare Office (Jugendamt) in cross-border family disputes.

It noted with concern the fact that Parliament's Committee on Petitions has, for over 10 years, been receiving petitions in which a very large number of non-German parents denounce **systematic discrimination and arbitrary measures taken against them by the German Youth Welfare Office** (Jugendamt) in family disputes with cross-border implications involving children, on matters concerning, inter alia, parental responsibility and child custody. Whilst noting that the subsidiarity principle applies in issues of substantive family law, Parliament considered that in light of Article 81 of the TFEU the **Commission can and must play an active role** in ensuring fair and consistent non-discriminatory practices towards parents in the treatment of cross-border child custody cases throughout the Union.

Best interests of the child: petitioners denounced the fact that in such cases, the best interests of the child is systematically interpreted by the competent German authorities as the need to ensure that **children remain on German territory**, even in cases where abuse and domestic violence against the non-German parent have been reported. Parliament regretted the fact that for years the Commission has not implemented accurate checks on the procedures and practices used in the German family law system, including the Jugendamt, in the framework of family disputes having cross-border implications, thus failing to effectively protect the best interests of the child and all other related rights.

Short deadlines: Parliament expressed its concern about cases raised by petitioners regarding short deadlines set by the competent German authorities and documents sent by the competent German authorities, which were not provided in the language of the non-German petitioner. It called on the Commission to assess the implementation in Germany of the provisions of Regulation (EC) 1393/2007 on the service of documents in order to properly address all possible violations, stressing the right of citizens to refuse to accept documents that are not written or translated into a language they understand.

Mutual recognition: Parliament expressed concern about the fact that in family disputes having cross-border implications, the German authorities can, allegedly, systematically refuse to recognise judicial decisions taken in other Member States in cases where children who are still not quite three years old have not been heard. Members underlined that this aspect undermines the principle of mutual trust with other Member States whose legal systems set different age limits for the hearing of a child. They also stressed the obligation, as provided for in the Brussels IIa Regulation, for national authorities to recognise and enforce judgments delivered in another Member State in child-related cases. Parliament called on the Commission to assess in the petitions in question whether German jurisdictions have duly respected the provisions of the Brussels IIa Regulation when establishing their competences, and whether they have taken into consideration judgments or decisions issued by jurisdictions of other Member States.

Habitual residence of the child: Members referred to the autonomous notion of the 'habitual residence' of the child in EU law and the plurality of the criteria to be used by the national jurisdictions to determine

the habitual residence. They called on the Commission to ensure that the habitual residence of the child has been properly determined by the German jurisdictions in the cases referred to in the petitions received by the Committee on Petitions.

Parental language: Parliament condemned the fact that failure by non-German parents to use the German language during conversations with their children has led to the interruption of conversations and to a ban on contact between the non-German parents and their children. This procedure adopted by the Jugendamt officials constitutes clear discrimination based on origin and language against non-German parents. Members asked for mechanisms to be put in place to guarantee that non-German parents and their children can communicate in their common language.

Statistical data: Parliament strongly criticised the absence of statistical data on the number of cases in Germany in which court rulings were not in line with the recommendations of the Jugendamt and on the outcomes of family disputes involving children of binational couples, despite the repeated requests over many years. It insisted on the importance of Member States collecting such data on the administrative and judicial proceedings concerning child custody and involving foreign parents, in order to allow for a detailed analysis of existing trends over time and to provide benchmarks.

Support for non-German nationals: in order to avoid cases where parents give their consent without fully understanding the implications of their commitments, Parliament called on Member States to implement targeted measures aimed at **improving legal support, aid, counselling and information** for their nationals in cases where they denounce discriminatory or disadvantageous judicial and administrative procedures adopted against them by the German authorities in cross-border family disputes involving children.

Furthermore, Parliament called on the Commission to:

- increase **training** for and international exchanges between social services officials in order to raise awareness of the functioning of their counterparts in other Member States and to **exchange good practices**;
- co-finance with Member States the establishment of a **platform** providing assistance to non-national EU citizens in family proceedings;

Lastly, Parliament wanted to see effective follow-up to the recommendations of the final report of 3 May 2017 of the Committee on Petitions' Working Group on Child Welfare Issues, and notably to those related directly or indirectly to the role of the Jugendamt and to the German family law system.