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Committee on Petitions

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on a Fact-finding visit to Berlin (23-24 November 2011)

Committee on Petitions

Delegation Leader: Iliana Malinova Iotova

Participants:

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Heinz Becker (PPE, A)
Philippe Boulland (PPE, FR)
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Dr Peter Jahr (PPE) (ex-officio member)
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Background

The Committee on Petitions continues to receive a relatively large number of petitions concerning allegations of discrimination and mismanagement by the German child and youth welfare offices (Jugendamt). The Committee previously raised the matter with the German authorities during the last legislature, notably during a delegation visit to Berlin in March 2007 as a result of which it produced a document on which its policy has been founded ever since. However, due to the ongoing receipt of similar petitions, and because of the very sensitive nature of the problem, the Committee decided to revisit the issue within the framework of a new meeting with the Committee on Petitions and the Committee on Family, Senior, Women and Youth of the German Bundestag and with representatives of the competent German authorities.

In essence, the petitions which tend to be submitted by an aggrieved parent highlight the petitioner's reaction to what they see as the favourable treatment granted to the German parent and the consequent obstacles difficulties or impossibility for a non-German spouse to have contacts with his/her child even during supervised visits because of the strictly applied language rules where only the German language may be used. This raises a prima facie case of discrimination on the basis of nationality or language which is contrary to the provisions of the EU Treaty.. German parents are also tabling petitions to the Petitions Committee of the European Parliament complaining about the actions and the taken decisions by the German Youth Welfare Office; however in these cases the EU Treaty provisions may not apply regarding discrimination although other provisions, such as those contained in the Charter of Fundamental Rights may be relevant.

It should be noted that the petitions received do not necessarily provide complete information on each case, and indeed may only provide one side of a very complex and traumatic situation for the parents concerned, but more importantly for the children themselves who's interests must in every situation remain paramount.

The members of the delegation and the Petitions Committee place on record their thanks for the good cooperation with the German authorities at every level during the course of this visit.

Meeting in Berlin on 24 November 2011 in the German Bundestag

Morning

- **09.00 - 10.15**

After an introduction by the delegation leader, Iliana Malinova Iotova, who underlined that the aim of the visit was not to take any decisions in individual cases or to interfere in national legislation but to clarify the allegations made by the petitioners, the programme started with a meeting with Ms **Sabine Brieger**, judge at the Family Court of Berlin-Pankow/Weissensee and liaison judge in the International Haag Judges Network and Ms **Azime Zeycan**, lawyer, specialized in family law.

Sabine Brieger gave an overview of the family court proceedings concerning parental custody. She underlined that in cases involving married parents, the parents normally continue to have joint right of custody, and the decision concerning the child's residence and other formalities are in 60 % of the cases taken in mutual agreement and without a court decision. Only 2 - 3 % of such child custody cases end as more prolongued court fights.

In cases involving unmarried parents, the mother will generally have the sole custody if the parents do not make a custody declaration. All parents, whether they are married or not, may also apply to the "Jugendamt" to work out a mutual solution, which can serve as a basis for a court decision on parental responsibility.

According to the German Civil Code, interventions in parental rights by the family court are only possible if the child's well-being is endangered (neglect, abuse, sexual abuse) and the parents are unable or unwilling to put an end to this risk situation. In such cases, where the "Jugendamt" participates and is heard by the court, the care of the child may be partial or completely withdrawn from the parent, and the court can issue a decision concerning supervised visits.

Sabine Brieger also underlined the importance of the participation and representation of the child in the court proceedings, personal hearing (normally beginning with the age of 3 years and mandatory for children over 14 years) and provision of information to the child about the subject matter, the course and possible outcome of the proceedings. She also called attention to the importance of interdisciplinary collaboration, but stated that at the end of the day it is the parents, who should assume responsible for a reasonable solution.

In her intervention Ms Azime Zeycan, who works as a lawyer in Bochum, claimed that Sabine Brieger had given a too rose-coloured description of the situation, and that the purpose of her presence at the meeting was to give a realistic picture of the way, in which the system is working. She referred to the case of the Turkish citizen, Kazim Görgülü (she was his lawyer) who for years requested custody of his non-conjugal son, who the German mother after the birth but without his consent had given to be adopted. The case ended up in the European Court of Human Rights, which found the German authorities guilty of a violation of Article 8 (privacy) of the European Convention of Human Rights

Azime Zeycan said that "Jugendamt" staff needs better training and that they sometimes neglected court decisions. She also advocated that joint custody should be upheld until a final court sentence is pronounced. In this connection she referred to the case of Mr T.P. (she was his lawyer) concerning custody of his two children, one of whom is mentally and physically handicapped[1]. Originally the court had awarded him custody of the children, but after the intervention of the "Jugendamt", custody was transferred to the children's mother, who T.P. claims is incapable of assuming the responsibilities of bringing up a seriously handicapped child. She thus underlined, that the "Jugendamt" had not enforced a legal decision taken by the Court.

Finally Azime Zeycan drew attention to the serious problem concerning the parental alienation syndrome (PAS), which represents an extreme form of "brainwashing" of children by one parent. The objective in such cases is to obtain revenge, and there is no greater revenge in the mind of an aggrieved parent than blocking the other parent from playing a meaningful role in the child's life. This syndrome is also seen in more complex forms, when it is embedded in situations of alleged child abduction.

In the following discussion Members held an exchange of views on a hypothetical change of the "Jugendamt" structure, to take account of problems related to bi-national couples, linguistic problems, the number of similar cases in other Member States, possible discrimination of foreign parents, control of the "Jugendamt", PAS and easy manipulation of disabled children, a mechanism for monitoring of the "Jugendamt", supervised visits and interpretation and possible reasons for non-fulfilment of court decisions (lack of training or staff capacity).

In her reply to Members, Sabine Brieger stated that there was no need for changing the structure of the "Jugendamt". The problem is that parents often do not know which role "Jugendamt" plays. The "Jugendamt", she stated, is an administrative body, whereas it is the court which has the authority to take a formal decision on parental rights and duties. Interpretation is, she maintained, as far as possible given in cases of supervised visits, and the legal aid is very generous.

In her reply to Members, Azyme Zeycan stressed that hierarchical controls on "Jugendamt" staff did not work and should be replaced by functional controls.

- **10.15 - 11.00**

The meeting continued with members of the Committee on Petitions of the German Bundestag[2]. Iliana Malinova Iotova, started by pointing out that an exchange of views concerning the "Jugendamt" petitions was one of the main aims of the visit. **Kersten Steinke** (chairman) replied, that the "Jugendämter" due to the federal structure of Germany do not fall within the competences of the Bundestag but are under the responsibility of the federal states (Länder), and the this matter therefore could not form the basis of a discussion. However there were 25 petitions on this subject tabled in the Committee on Petitions of the German Bundestag, and the committee in most cases forwarded them the Committee on Petitions of the Länder concerned.

[1] Petition 0128/2007.

[2] Kersten Steinke (chairman), Gero Storjohann (vice-chairman), Günter Baumann, Klaus Hagemann, Dr. Peter Röhlinger and Ingrid Remmers (coordinators).

Kersten Steinke continued by giving an overview of the structure and work of the Committee on Petitions of the German Bundestag. She explained i.a. that in 2005 the Bundestag introduced an online petition system that allows citizens to raise and sign a petition, read background information on the issue, and add comments to an online forum associated with each petition. This system is characterised by its integration into the processes of representative democracy, and more than 1,8 mio citizens have signed petitions on-line.

In the following exchange of views Members touched upon questions as the Citizens Initiative, lack of improvement in the "Jugendamt" cases since last delegation visit in 2007, treatment in the Bundestag of "Jugendamt" petitions, competences of the Committee on Petitions of the Bundestag compared with the competences of the EP Committee on Petitions, acceleration of procedures and implementation of EU legislation.

Philippe Boulland questioned the decision of 18.12.2006 concerning the petition of T.P., which was not forwarded to the Land concerned, but concluded: *"In a conflict between the interests of parents and the superior interests of the child, the latter have priority, which is why parents may not call into question a neutral position adopted by the 'Jugendamt'"*.

The German interlocutors requested a better feedback from the European Parliament concerning petitions forwarded from the Bundestag and a possible joint meeting in 2012 with the view of an improved collaboration on matters, which fall within their respective competences.

- **11.00 - 12.00**[3]

Iliana Malinova Iotova, welcomed Gabriele Scholz, head of the German branch of International Social Service (ISD/ISS), accompanied by Ursula Rölke, lawyer, and Georg Stahl, social worker.

Gabriele Scholz started by explaining the work of ISD and its organizational structure. ISD is the German branch of International Social Service (ISS) and the same time "Department VII" of the German Association for Public and Private Welfare, which is being funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. ISD is active in the fields of international family conflicts, child protection and migration, seeing itself as an intermediary between voluntary welfare agencies, youth welfare and other authorities and family courts in Germany and those abroad. It provides service for cases with an international dimension, obtains social reports from abroad, and provides counselling to voluntary welfare agencies, local authorities and courts as well as individuals. ISD is composed of an interdisciplinary team of legal and social professionals. Gabriele Scholz then focused on cross-border family-conflicts and stated, that such conflicts do not only affect bi-national couples (a German and a foreigner), but a wide variety of couples with a multitude of nationalities. This is why international regulations focus on the place of normal residence and not on nationality.

She gave a short overview of the German family law and ISD' role in this context. She pointed out, that the guiding principle for any decision by a court or "Jugendamt" is the best interest of the child. Geographical distance makes it more difficult to resolve conflicts and to clarify a case, and it is not easy for professionals of the relevant agencies to keep track of the multitude of laws, international conventions and cultural and language particularities. From ISD' experience this complexity is one of the reasons for possible mistakes by some employees of the "Jugendämter", but in general these offices provide good work. It should be noted that authorities in other countries of the world are confronted with the same challenges and therefore also can make mistakes in dealing with cross-cultural cases. ISD cannot support the accusation that the "Jugendämter" systematically discriminate against foreign parents.

In the above mentioned cases ISD provides social reports as a basis for decision-making. ISD always tries to counsel on how the parent-child relationship can be maintained, and works towards an amicable agreement. Moreover it provides information and training seminars for professionals about matrimonial and family law of other countries, cultural differences and international law.

Gabriele Scholz also described the behaviour of parents in conflicts, which are often very tense. Not being able to find a solution themselves, parents sometimes fight with all means, trying to find allies for their cause. People and organizations not supporting them run danger of being seen as an opponent. Private conflicts are sometimes even being elevated on a bilateral level. In this connection she referred to the Colombo case [4] where the concerned parent apparently had complained not only about the German

[3] This part of the meeting was attended by Ms Sibylle Laurischk, chairman of the Committee on Family Affairs, Senior Citizens, Women and Youth.
[4] Petition 1614/2009.

but also about the Italian authorities. What gets out of sight during these conflicts, she re-iterated, is *the best interest of the child.*

She stated further, that federal as well as regional authorities must take note of the international dimension. In order to provide individuals and professionals with advice, the government assigned ISD the function of a central contact point for information in international family conflicts, and the "Jugendämter" are regularly asking for training seminars.

In the following exchange of views Members focused on transparency issues and the collaboration between ISD/ISS and "Jugendamt", spheres of competence, language problems, the great number of complaints against Germany, possibilities of lodging appeals at administrative or legal levels, the lack of an Ombudsman for Children (as in Poland), training of "Jugendamt" staff, the creation of a central contact point, the question of accountability of the "Jugendämter" and who is ultimately responsible, the organisation of supervised visits and the importance of contact with grandparents abroad.

In her reply Gabriele Scholz stated that "Jugendamt" is not responsible for field work abroad. This is done by ISD and its cooperation partners. In cases involving contacts with relatives abroad, ISD contacts the appropriate agency and asks the local social service for cooperation with the view to provide the necessary possibilities for the persons involved. The collaboration with the courts and "Jugendamt" is fruitful, although the "Jugendämter" often are overloaded with work. "Jugendamt"-decisions are either bound to confirmation by a court or can be appealed against before the court. Referring to the great number of complaints against the "Jugendämter", she said that these numerous complaints might be initiated intentionally by "interested" circles.

She drew Members attention to the false accusations related to German history and to a website calling for complaints against the "Jugendämter" by foreign nationals. On this website a French organization offers support in drafting petitions to the European Parliament with the aim to make the European Parliament focus on the German "Jugendämter".

Ursula Rölke took the floor on the question of supervised visits, saying that it only could be ordered by a court under certain circumstances and in order to serve the best interest of the child. She mentioned that parents were only obliged to use German language, when this was considered to be indispensable for the protection of a child.

Afternoon

Iliana Malinova Iotova, welcomed the participants in the afternoon meeting: Ms ***Uta von Pirani***, director of the Youth Welfare Office of Berlin Charlottenburg/Wilmersdorf, ***Dr. Heike Schmid-Obkirchner***, HoU, Federal Ministry for Family, Senior, Women and Youth, Mr ***Eberhard Carl***, HoU, Federal Ministry for Justice, Ms ***Sabine Brieger,*** judge at the Family Court of Berlin-Pankow/Weissensee and liaison judge in the International Haag Judges Network[5], Mr ***Gerhard Bley,*** HoU, Ministry for Labour, Equality and Social Affairs of the State of Mecklenburg-

[5] Interlocutor at the morning meeting.

Vorpommern and Mr ***Valéry Turcey***, French liaison officer in the Federal Ministry for Justice[6].

Uta von Pirani gave an overview of the administrative structure of the Youth Welfare Office (Jugendamt) using the example of Berlin-Charlottenburg/Wilmersdorf (aprox. 320.000 inhabitants) and the services provided. The basic tasks of the "Jugendämter", she said, are to further young persons in their individual and social development and help avoid or eliminate disadvantages, give educational counsel and assistance to parents and other persons who have parental powers, protect children and young persons from harm to their welfare, and help to maintain or create positive living conditions and a favourable environment for children, youngsters and their families. A large number of families demand and benefit from these provisions.

The youth office employs almost exclusively qualified staff, including according to the area of responsibility social workers (often with an appropriate additional qualification), certified psychologists, administrative officials and secretaries and, in the recreational facilities, youth- and childcare workers.

Uta von Pirani emphasized, that in her function transparency is an important operating principle. People contacting "Jugendamt" should know the responsibilities of the respective members of staff and the reasons for their actions. She stressed that the "Jugendamt" does not act behind someone's back. She also pointed out that in her function as the director of the Youth Welfare Office of Berlin-Charlottenburg/Wilmersdorf she takes complaints very seriously and investigates them thoroughly. Complaints concerning benefit entitlements or the calculation of charges lead to opposition proceedings and may be referred to an administrative tribunal for decision. Staff supervisors look into complaints to verify that the socio-pedagogical or psychological activities of staff or their advisory opinions are appropriate and legally sound. In 2010, the youth office spent about € 100 Mio. 57% of these expenses were used to finance day care for children below school-going age and 0,3% on supervised visits.

The "Jugendämter" also provide counselling service in the case of family disputes, separation or divorce proceedings. The "Jugendämter" have the task of advising parents on possible solutions to resolve the conflict or on the best way to fulfil their parental responsibilities after the divorce. In doing so, the "Jugendämter" fulfil their mediatory task in disputes and divorce proceedings. The aim is to arrive at solutions which are in the best interest of the child. The "Jugendämter" participate in family court proceedings, but decisions adjudicating on parental rights and duties may only be taken by a family court and not by the "Jugendämter". Uta von Pirani stated that supervised visits are seen as a temporary measure, and that the service of supervised visit in Berlin covers 42 languages.

She finally underlined, that working in a "Jugendamt" is difficult due to criticism, mistrust and lack of recognition. The negative public debate on the "Jugendämter" in the media and partially politics makes it difficult for parents to seek assistance and advice from the youth office in good time. She underlined that the police is only

[6] The members of the Bundestag Committee on Family, Senior, Women and Youth and the Subcommittee on Children, who were foreseen to participate in the meeting, were excused due to other obligations.

involved in cases,where the children are endangered and that there are nationwide emergency services which are open day and night.

Dr. Heike Schmid-Obkirchner, head of the division "Rechtsfragen der Kinder- und Jugendhilfe" (legal questions related to child and youth assistance) in the Federal Ministry for Family, Senior, Women and Youth, gave an overview of the German system of youth welfare services. She pointed out that the responsibility for providing child and youth services rests with local authorities and is delegated to youth offices ("Jugendämter") and voluntary organisations according to the local or regional circumstances. Despite the community's responsibility the Social Code VIII regulates the youth services nationwide and comprehensively. The Federal "Länder" have fleshed out, complemented and broadened the Federation's legal framework for the child and youth services by their own Länder laws – i.e. cities, towns and rural districts execute a differentiated legal framework within the scope of municipal self-government. She stressed that according to the law, youth offices are in principle not empowered to take decisions adjudicating on parental rights.

With regard to the youth offices she explained i.a. the role of the "Jugendhilfeausschüsse" (Youth Services Committees), which next to the administration are a part of the youth office (Jugendamt). These committees are composed of members of public bodies, citizens proposed by youth welfare and youth organizations. These are complemented by experts from various related areas as consultative members. While the administration manages the current affairs, the Youth Services Committee determines the guidelines of local youth policy. It deals with all matters related to youth services, especially the discussion of problematic situations, proposals for the further development of youth services, youth services planning and the support of voluntary youth services. This participation of citizens and professionals creates the two-sided and unique structure of the "Jugendämter".

Dr. Heike Schmid-Obkirchner also referred to the question of monitoring as well as complaints and appeal mechanisms regarding the "Jugendämter", explaining various possibilities of complaints which were dealt with at local or "Länder" level and by the respective administrative tribunals. She signaled the readiness of the German authorities to seek background information if they should be contacted whenever a petition is submitted. So far as these petitions may concern the German system of youth welfare services the Federal Ministry for Family, Senior, Women and Youth will forward inquiries received from the Petitions Committee to the competent authorities in Germany and undertake the utmost effort to ensure, that the Petitions Committee obtain prompt information.

Gerhard Bley, responsible for Youth and Family in the Ministry for Labour, Equality and Social Affairs of the State of Mecklenburg-Vorpommern, referred to the measures for collaboration between the "Land" and the "Jugendämter" for which 2 mio euro each year had been earmarked, and stated that the aim of "Jugendamt" was to cooperate effectively in family disputes regarding parental custody. He also questioned the working document on "Jugendamt" elaborated by the Committee on Petitions in 2009 and requested that the "Jugendämter" concerned should be able to make their own statement in the course of the procedure, since fair hearing is a constitutional principle and therefore should be integrated in the petitions procedures He also stated that there were no cases of discrimination on the basis of nationality.

In the first exchange of views Members raised questions concerning the federal structure and the difference between big cities and small towns which impedes a common German reply to the follow-up of the complaints, possible changes since the lest delegation visit in 2007, the language question and the great number of petitions, possibility of appeal against a court decision, allegations concerning unqualified staff, interpretation of the notion "*the best interest of the child"*, unsatisfactory information and the returning question of training and monitoring of "Jugendamt" staff.

The German interlocutors stated that the "Jugendämter" are staffed with specialists in social affairs and administration and complaints are dealt with on the highest level (administrative court or in the last resort the higher regional court (Landesobergericht)). It was also proposed to advise petitioners to address themselves to the ministries responsible (Family or Justice).

The second part of the afternoon meeting started with the intervention of Eberhard Carl, formerly judge and now head of the division "Mediation, conciliation, international conflicts in parent and child cases" at the Federal Ministry of Justice, who referred to a number of cases of fruitful collaboration between Germany and countries as Poland, France and USA. He underlined that there is no discrimination on the basis of nationality, but that administrative mistakes of course can occur in all countries. He requested that the working document on "Jugendamt" elaborated by the Committee on Petitions in 2009 should be removed from the internet. He also criticized an interview with Philippe Boulland, published the same day in Frankfurter Allgemeine Zeitung (FAZ).

He stressed that the German authorities would be ready to look for necessary information if they were to be contacted whenever a petition is submitted. So far as these petitions appear to concern family court proceedings; the Federal Ministry of Justice will see to it that inquiries received from the Petitions Committee are forwarded to the competent authorities in Germany, accompanied by a request for prompt information, and that the information then received will immediately be passed to the Petitions Committee. In Germany, supervision of the family courts at first and at second instance is the responsibility of the individual Länder, who are therefore also competent to deal with inquiries and information concerning the family courts.

Sabine Brieger followed up on her previous intervention by referring to child abduction prevention in Germany, which may include a call for a border alert for the territory of the Schengen countries. The border alert is issued by the Federal Police Department upon request by the local court. The request has to be based on a concrete and apparent risk that the other parent or any other person intends to wrongfully remove the child to another country. The Federal Police Department may then have the alert concerning the abducting parent and the child entered into the Schengen Information System (SIS) for search measures to be initiated. She also stated that due to new rules, the procedures involving parental rights and duties will be accelerated in the future.

Valéry Turcey thanked the delegation for giving him the possibility to participate in the meeting and stated that the cases referred to him were cases where the decision

taken by a German court was contested. The number of such cases was very limited. In 2011 he had not treated more than 10 cases. He said that situations involving bi-national disputes often are coming to a head due to attacks and insults on the internet or in the media, where only one side of the case is illustrated. He also stated that it is very important to understand the difference in judicial culture not at least when choosing a lawyer. At a question from Members concerning a possible discrimination of a non-German parent, Valéry Turcey rejected this categorically, underlining that Germany is a state of law. The different concepts of family values might nevertheless give raise to doubts to misunderstandings. The German judges attach great importance to stability, school and orderly conditions, while French judges are sometimes more focused on the emotional and subjective aspects of such cases.

Referring to the critical comments on the interview in FAZ, Philippe Boulland stated that perhaps his words had been misinterpreted but that he had indeed said that he found it shocking, if the petitions he had examined turned out to be true, and that it was clear that Parliament should take part in the public debate and could not hide from the media or from citizens. He also said that he has become aware of the fact that the internet campaign initiated by CEED (Conseil Europeen des Enfants du Divorce), an organisation which actually had approached him, could not be taken seriously as its provocative actions undermined its credibility and possibly weakened the chances of legitimate complaints being objectively assessed. However, well-founded, verifiable and objective analyses and arguments put forward by parents' associations of parents themselves should not be dismissed. He proposed to refer the petitions to the Ministry of Justice, but underlined that he was not satisfied with the lack of possibility of appeal.

Members pointed out that citizens should be better informed about the existing possibilities of assistance and legal advice and the cultural differences in the judicial systems. It was also mentioned that the European Parliament's Committee on Petitions, in cases where a petition is declared admissible and sent to the European Commission for further investigation, must wait much too long before it gets a reply and that the replies from the Commission are often unsatisfactory.

In spite of some outstanding issues requiring further clarification the members considered that the meetings had provided a new basis for improved levels of cooperation between the Committee on Petitions and the competent German authorities.

Conclusions:

Many conclusions may already be drawn from the narrative part of the document itself**,** however, members consider that the following points are worth highlighting.

- The Committee did not come across any evidence or indication and, most importantly, any structural character of the petitioners' complaints that would give reason to believe that cross boarder-marriages be especially discriminated by German authorities.

- Child and youth policy in Germany is characterised by a diversity of levels of responsibility in line with Germany's federal structure and also includes municipal authorities and the voluntary child and youth service organisations in the framework of their partnership with public agencies.

- The institution "Jugendamt" was established in 1922 as part of the municipal self-government of cities, towns and districts. Since 1990 the Social Code VIII is the legal basis for the responsibilities incumbent on the "Jugendämter". It still transfers the entire responsibility for child and youth welfare into the hands of the cities, towns and rural districts.

- Decisions adjudicating parental rights and duties may only be taken by a family court and not at an administrative level by the "Jugendamt". The family court delivers judgements on the measures to be taken if the child's wellbeing is endangered or on matters of child custody, for example, in divorce cases. "Jugendamt" participates in family court proceedings. The court must hear the "Jugendamt" during a procedure of this nature.

- In cases of divorce proceedings "Jugendamt" is kept informed by the family court on a regular basis about divorce applications if children and young persons are involved. This information makes it possible to offer the parents and children counselling and support in the separation situation and when regulating parental rights and duties

- As a consequence of municipal self-government, the power of the competent supervisory authority to examine the discretionary decisions of the "Jugendämter" is limited to the legality of their decisions. However, decisions of the "Jugendämter" can be scrutinized by the administrative tribunal.

- Under the Treaty on the Functioning of the European Union, the European Commission has no powers to intervene on an issue which does not involve European law. EU family law relating to children is limited to common rules on jurisdiction and the recognition and enforcement of existing judgments in another Member State.[7]
  However, the Treaty enables the petitions process, for which the Petitions Committee is responsible, to cover a broader remit incorporating all "EU fields of activity". Moreover the Charter of Fundamental Rights which is an integral part of the EU Treaty has considerably broadened not only the legitimate expectations of EU citizens but also the responsibilities of the Petitions Committee to ensure such rights are respected at the political level.

- In accordance with article 24 of the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child, Member States have to ensure that in all actions relating to children *the best interest of the child* is a primary consideration. The national courts are in the best position to assess the application of the principle of *the best interest of the child* in individual cases as they are required to have access to all relevant information and to respect the rights of defence.

[7] Regulation (EC) No. 2201/2003 (Brussels IIa Regulation).

- In accordance with article 24, paragraph 1, of the Charter of Fundamental Rights of the European Union, "*children shall have the right to such protection and care as is necessary for their well-being. 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*", and in accordance with paragraph 3, "*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 interests".*

- Under Regulation (EC) No 2201/2003 the issue whether or not a child's removal is wrongful depends on the existence of "rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention". Accordingly, it is the law of that Member State which determines the conditions under which parents acquire rights of custody in respect of their children.

- The committee reckons that insufficient communication and explanation of judiciary rulings, of the distribution of competences between the authorities as well as of extra-judicial and judicial remedies might be a reason why affected parents could not be in the position to correctly assess all relevant facts and circumstances relative to their case. It is only through a comprehensive but tangible presentation and clarification of all important information that citizens can understand the legal and factual background of decisions and find out easily and promptly whom to address if they are not satisfied with such a decision.

- The Committee on Petitions in the European Parliament welcomes the support of the German authorities for the existing forums and initiatives related to the coordination between child and youth services in Germany, and will ensure that correspondence will continue between the Committee and the German authorities in order to strengthen the rights of citizens and those of children in particular.

In this context it makes the following recommendations:

1. Recommends an examination of the extent to which those affected by legal changes have access to the petition process in the national system after the conclusion of the judicial reviews as part of the legal avenues provided for by German Federal law.

2. Recommends a specific information transfer between concerned authorities regarding international divorce cases involving children, especially a more systematic cooperation with the other countries concerned.

3. Recommends German authorities to continue supporting the "Central Contact Point in Cross-Border Parent and Child Conflicts" in the ISS which acts as a

guide for parents on the legal and other options (eg. mediation) that are available to them, and that ISS or another independent association could be mandated to do a counter-expertise if the Jugendamt report seems to be impartial for example to ensure that both parents were interviewed for the report.

4. Recommends that authorities should be sensitive to improve the conditions of the meetings on regularly frequency, between parents and their children and ensure that all relevant languages and interpretation facilities be allowed, provided free and tolerated during parental visits, though, in exceptional cases (a possibility of abduction) under the supervision of an official.

5. Recommends that regular contacts between children and parents are preserved as much as possible as well as contacts between the child and its grandparents and siblings, though only if and as long as it is not contrary to the child's well-being in comformity with Paragraph 1685 of the BGB (Bürgerliches Gesetzbuch) and Article 24 Paragraph 3 of the Charter of Fundamental Rights.

6. Recommends that all relevant information during the investigation or the process of appeal should be provided within a reasonable time.

7. Recommends due to many complaints, that a meeting organised by the Youth Welfare Office between parents and children can be cancelled only with argumentative facts to avoid that foreign parents pay huge amount of money for a last minute cancelled travel, and recommends that foreign parents who receive permission to visit their children in Germany be informed well in advance so as to give them time to prepare their visit.

8. Recommends the elaboration at EU level of clear guidelines on the rights of the child and on the implications of cross-border and bi-national marriages and divorces, and systematic mention of the European internet platform E-Justice in all replies to the petitioners.

9. Recommends that the Youth Welfare Office provides all relevant information when contacted by a parent or his/her lawyer, and this swiftly executed in terms of transparency and justice, when an investigation has been opened; recommends also that the process of appeal is clearly explained to the public and the parents, who are to be seen in court.

10. Recommends that a specific list of names of bi-national lawyers, specialized in family law as well as support structures for parents, to be provided to foreign parents wishing to defend themselves in Germany.

11. Recommends the promotion of bilateral cooperation between Member States and their judiciary in order to enhance understanding of different national legislations by citizens and authorities.

12. Recommends that a closer collaboration on petitions concerning the "Jugendamt" should be established between the Petitions committee of the

Bundestag and the Committee on Petitions of the European Parliament in order to process cases more quickly.

13. Recommends that petitions concerning the Jugendamt which have been declared admissible are forwarded to the Federal Ministry of Family, Seniors, Women and Youth for information.

14. Recommends that this document, which refers to the current situation in Germany and reflects the current view of the Petitions Committee on the issue of Jugendamt, is sent for information to the responsible German authorities, to the petitioners who contact the Petitions Committee regarding the Jugendamt, and that it is made available on the web-site of the petitions Committee for information purposes to the public.

15. Recommends a better training and a life-long learning policy of the Jugendamt staff regarding international divorce cases where a child is involved, and an additional check by other Jugendamt offices or agents in case where a human error is registered.

16. Recommends, even in the emergency procedure, that an extensive discussion and assessment with parents should take place prior to any legal and binding judgment/decisions, in view of possible child abduction, and that information is provided in due course to the parent about the transfer of their parents' authority to the other parents, in conformity with Article 47 of The Charta of Fundamental Rights.

17. Recommends that the hearing of parents and children in front of a judge, an expert or a Jugendamt officer is done separately in order to avoid influence and loyalty conflicts for the child.

18. Recommends that member states take more into account decisions of the ECHR concerning family rights.

19. Recommends the creation of a working group within the Committee on Petitions in order to provide more time and mediation, when necessary, on the subject of international divorces, and to give an additional opinion, and that all petitions which are declared admissible to be dealt within a decent time frame.

20. Recommends launching an information campaign at the EU level notably on the reglementation Rome III (entry into force the 21th of June 2012).