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Committee on Petitions

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Objective

The objective of the visit was to hear interested parties, including petitioners and the relevant Danish administrative, political and police authorities, on the handling by the Danish authorities of child care/welfare, custody and child abduction cases in Denmark which were brought to the attention of the Committee on Petitions by non-Danish (ex)partners/spouses of Danish citizens¹.

The visit

The delegation deeply regretted that the Ministers and the Chief of Police, who had been invited officially by the Chair of the Committee, had not found the time to meet the delegation. It was stressed that this was most unusual. On all other missions to various EU Member States EP delegations had always had access to personalities at the highest (political) levels.

The Ministry of Justice representative apologised for his Minister's absence. It was the end the Danish parliamentary season and the Minister's agenda was full.

Ministry of Social Affairs and Integration

A high-ranking official of the Ministry of Social Affairs introduced the applicable Danish law. It was underlined that decisions on custody, visiting rights and return of abducted children are made with the best interest of the child in mind. The Danish Parental Responsibility Act is based on the UN Convention on children's rights. The child and its views should be heard in all cases covered by this law. In the case of very small children this was done with the help of a psychologist.

All matters concerning custody/visiting rights, divorces and contributions by parents are managed by the State Administration (Statsforvaltningen). In custody cases the State Administration makes every effort to ensure that parents agree on all matters concerning the child. The State Administration mediates between parents and if parents do not reach an agreement, e.g. on visiting rights, the State Administration will make a (temporary) decision. Decisions on custody rights made by the State Administration must be confirmed by the court. Court decisions can be appealed in a higher court.

Denmark is party to all Hague Conventions and other conventions concerning child abduction. The Ministry is the Central Authority for the Hague Convention. Cases of international abductions to Denmark are dealt with as soon as possible. It is the High Court which decides on the possible return of children.

A special "contact judge" was appointed to answer questions on the interpretation of the Convention. Also there was a "contact committee" for child abductions in which all actors (including police and State Administration) in abduction cases are represented.

Asked why the Danish authorities had not reacted in two specific cases (Austrian and Italian)

¹ See Annex 1 for a list of the main petitions.

no comment was given. On the question if the Danish authorities were acting correctly in these cases the reply was that decisions are taken by the court in accordance with Danish law and international conventions.

The delegation stressed that in the two cases Danish courts had already established the residence of the children and therefore the question why these children had not yet been returned remained.

According to the representative the Convention contains exceptions concerning returns. In cases where a return is deemed harmful or not in the best interest of the child a judge may decide that a child will not be returned. In terms of numbers of returns under the Hague Convention Denmark was in line with other states.

Asked whether the Danish authorities acknowledge that there is a problem with international custody and abduction cases the reply was that the authorities do not have the impression that any significance is attached to the citizenship of parents.

When confronted with cases seeming to contradict the rule that the best interest of the child prevails (e.g. the American case in which a court sent a child back to live with her allegedly abusive father) it was stated that according to Danish law in the case of violence against the child, the mother or even a grandparent, the authorities should be very cautious in allowing any kind of contact with an abusive parent and even more so in allowing custody. However in such cases many aspects had to be taken into account as well as widely varying versions of the story between parents. It could be imagined to be in the best interest of the child to stay in contact with a parent even if that parent may have been violent in other situations.

As regards equal treatment of Danish and non-Danish parents it was acknowledged that this was a serious problem. It was also acknowledged that being a foreigner is difficult in terms of language, the legal system, etc. However, the Danish authorities did their utmost to mediate between parents and obtain an agreement in the best interest of the child. If there is no agreement the court decides and there was no reason to assume that Danish courts discriminate against foreign parents.

The "best interest of the child" in Danish law was described as a dynamic assessment depending on the individual child and the circumstances of the case. There was no list of criteria. The Danish authorities and the courts have to establish the conditions under which a child has grown up, with whom it has grown up, psychological and health aspects, etc. This meant that decisions in cases are concrete and highly specific.

The representatives would be happy to answer any further questions in writing. The delegation proposed a round table with the people concerned and asked the representatives to convey this proposal to the Minister.

Ministry of Justice

Representatives of the Ministry of Justice explained that the Danish opt-out on Justice and Home Affairs applied as from the Lisbon Treaty. Denmark does not participate in the regulations and directives concerning police and criminal law cooperation proposed in this

Treaty.

Denmark participates in all framework decisions decided before the Lisbon Treaty to the extent that they are not replaced by "Lisbon" instruments. All of these have been transposed into Danish law. As long as they are intergovernmental and not supranational Denmark cooperates on the basis of the "old" legal instruments.

If Denmark decides to participate in a part of the legislation on Justice and Home Affairs under the Lisbon Treaty it can ask for a parallel agreement which has to be agreed to by the Commission and the other Member States. Denmark participates in other international agreements such as the Hague Convention and Council of Europe conventions.

On the specific cases presented to the Committee on Petitions concerning children from Italy, Austria and America the delegation expressed astonishment about rulings by Danish judges and wondered why the children in these cases had not yet been returned and/or were obliged to live with an allegedly abusive father.

The Ministry of Justice had only handled the case of the extradition of the Danish father in the Austrian case and had established that the criteria for extradition had not been fulfilled. It was explained that the Danish law on extradition was based on the Framework Decision on the European arrest warrant and the surrender procedures between Member States, which contains a "positive" list of criteria which should give rise to extradition.

However, the Framework Decision also provides for the possibility to refuse extradition (e.g. of minors) and contains a rule which states that if the offence for which extradition is sought was partially committed in the country requesting extradition and where abduction is not punishable in that country, extradition may be refused. If a person has custody of a child it is not a punishable offence to take the child and the Danish authorities may refuse extradition.

On the assertion that according to the Danish court the father in the Austrian case did not have custody and so the mother - who had full custody - had every right to take the child with her to Austria, the representative would not comment as this was the competence of the Ministry of Social Affairs.

When asked why the father (alleged abductor) was not extradited the reply was that the Ministry had based its decision on a specific request by the Austrian authorities. More information on this request should be asked from the Austrian authorities. No further comments could be made.

The representative confirmed it was a criminal case and that an abduction - even when there are no doubts about the right of custody - using violence would be an offence and would give rise to extradition.

The delegation maintained that the retrospectively granted custody was illegal, as had been confirmed by a human rights expert, and that at no point in time the father had the right to travel to Austria, take the child and violate the rights of both the mother and the child.

Danish National Police

A police document from 2011 was presented which stated that one mother when in Denmark should have been arrested for escaping parental responsibility, have been held in remand and been brought before the judge within 24 hours after an arrest under § 215.

In the case of another mother, who was arrested under § 497, then released and immediately arrested again (under § 215) on the suspicion of intending to abduct a child, no comment could be given.

Asked how the police can arrest a person without a judge knowing about it, the representative stated that on the basis of the above-mentioned document the police can arrest a person who then has to be seen by a judge within 24 hours. According to the information of the delegation this said mother was seen by a judge more than 48 hours after her arrest. No comment or explanation was given.

Asked how the Danish authorities ensure that a foreign parent has the same rights as a Danish parent, taking into account the threat of a § 215 arrest, the representative stated that Danish courts are very concerned with compliance with international human rights conventions, including provisions on discrimination on grounds of nationality.

Asked how the authorities perceived the cases in the light of the Charter of Fundamental Rights it was explained that the Charter must be applied and respected to the extent that issues fall within the scope of EU law.

On the question of illegal arrests (no lawyer present, no judge within 24 hours, and no knowledge of the court) the reply was that there was no discrimination of foreign nationals by the courts or the police and that the same rules applied to Danish nationals.

The delegation reiterated that it is very problematic for a non-Danish parent to return to Denmark knowing that he/she can be arrested at any time under § 215 at the instigation of the Danish parent. In other words, there is no level playing field for both parties and the non-Danish party does not have the same "weapons" to fight for his/her rights. This greatly undermines trust in the legal system in Denmark.

It was explained that the police do not listen to just one party and will not automatically make an arrest when called on to do so. They will first investigate and make an arrest only when there is a clear suspicion that an abduction is about to happen. Arrests are the exception rather than the rule.

The delegation stated that foreigners have problems obtaining compensation in Denmark. She asked for more attention to this issue and urged the Danish interlocutors to provide more and better information on the Danish legal situation to non-Danish parents, so that both parties would be on an equal level in custody cases.

It was explained that Danish authorities are under an obligation to inform the public, Danish and non-Danish, and that this is being adhered to.

The representatives indicated that the authorities represented would be willing, under the

condition of confidentiality, to provide more specific information in writing if requested.

Meeting with petitioners (this part reflects the presentations of the petitioners present)

At the meeting some 40 petitioners were present. The meeting was scheduled between 7 and 9 p.m. but lasted until 11.30 p.m.

The following is not a full account of all the cases the delegation heard. At the request of several attendants no names will be made public.

Most of the petitioners were women, both Danish and non-Danish, although the majority was of Danish origin (90%). Almost all cases concerned mothers trying to obtain or keep custody of their child(ren) and/or trying to protect their child(ren) against an abusive father.

The petitioners, who presented their cases in great detail, complained about the State Administration and the Danish police which do not help (non-Danish) mothers who are trying to protect their children from an abusive father. In many cases the State Administration did not investigate warnings about abusive fathers and instead insisted on the (Danish) father having visitation rights.

The Danish Parental Responsibility Act on the one hand demands that a child is protected against harm while on the other it makes contacts between the child and the parents obligatory. A common complaint was that the State Administration is very strict in applying the law as concerns contact while turning a deaf ear to warnings and ignoring the right of the child to be protected and the right of the mother to protect it.

One mother was imprisoned for keeping her child away from its father. The State Administration did not listen to her warnings that the man was abusive and dangerous and insisted that the mother allow contacts between the father and the child. The only way to protect her child and not be accused of breaking the law (and risk losing custody) was to give the child into foster care. The case was re-investigated, the father diagnosed a psychopath and charged with sexual abuse.

A staff member of the Italian embassy, speaking on behalf of two Italian fathers, noted the passive attitude of the Danish administrative authorities, a lack of investigation and clashes between court decisions in different countries as common features. The Italian fathers were not allowed to see their children. The reason the authorities gave was the "threat of abduction". Italian embassy staff was not allowed to contact the children in order to report on their well-being.

A family lawyer explained that the law does not protect the children and the primary caretaker. The old law was better as the best interest of the child was expressed in terms of peace, stability (no changes to child's surroundings), safety and contact with the other parent. Also the child's history was taken into consideration. Under the old law the use of force by the authorities was very rare, as this was considered too traumatic for children. Primary caretakers were not put in prison or obliged to pay fines.

Under the current law parents have a right to a child and the primary caretaker is obliged to allow contact and visits. If contact is contested or visits refused a parent may lose custody

rights. It was thus almost impossible for the primary caretaker to protect a child from the other parent. Stability was defined as the right of parents to have contact with the child. Children are no longer believed and the child's history and other circumstances (other testimonies) are not taken into account.

In one case a mother and her child moved out of Denmark because of an abusive father. When back in Denmark the child was forcefully collected by a judge and delivered to the father. The mother was threatened with fines and imprisonment if she did not agree to her child having contact with his father. Custody was given to the father because of a lacking visiting address and the mother can see her child for only 4 hours a week.

The child was heard by experts but no action was taken on the child's plea not to be brought back to his father. Audio-visual material with the hearings of the child, to be used as evidence in court, had been destroyed.

In an attempt to protect her children from their allegedly sexually abusive father one of the mothers fled to Iceland. The children were brought back to Denmark by the Icelandic police only to be handed over directly to the father. The Danish father was acquitted of abuse in a psychological report based on a 20-minute visit by a psychologist.

Another mother reported sexual abuse and violence against her son. No action was taken. Even though experts had established that the child suffered from visits to his father, the authorities maintained that visits had to continue. The father threatened the boy with killing his mother if he spoke about the abuse. The boy suffers severe anxiety attacks at the thought of having to see his father. Nonetheless, the State Administration claimed that the child "benefits" from the visits.

A Russian mother lost custody of her child. Custody was given to the allegedly abusive Danish father. According to Danish experts the child (2 years old at the time and breastfed) "was more attached to the father". An arrangement was made for the child to stay 9 days with the father and 4 days with the mother. The mother was told that a 7/7 arrangement "could create problems for the child in the future". The mother should not speak Russian but Danish with the child. The mother is convinced that the real reason for depriving her of custody is the fact that she is a foreigner.

Another foreign mother had her and her daughter's passport taken away by her Danish husband. The husband left for China leaving his wife and daughter without passports. The police said that without proof they could do nothing. Eventually a new passport was issued so the mother could renew her visa and stay in Denmark. The Danish husband who is under psychological treatment has a gun at home. In court the daughter declared she was afraid of her father. She was not allowed to live with her mother.

An American mother who reported sexual abuse and violence was laughed at by the police. A court psychologist visited the mother and the children and asked the mother to sing Danish nursery rhymes with her two girls. She obviously was not able to do so. The psychologist's report concluded the mother had "communication problems". Based on the report the judge removed physical custody and gave it to the father. An arrangement with the children staying 4 days with the mother and 9 days with the father was ordered.

The abuse continued. The girls separately stated that they were afraid of their father and did not want to stay with him. The social service told the mother that if she would not cooperate

with the father they would put the children in foster care. The father is now filing for full custody. Under Danish law children at the age of 10 have the right to say with which parent they want to live. Full custody would prevent the children from living with their mother.

There were several complaints about the lack of action by the authorities and the Danish police in cases of stalking. Many women testified to being harassed and threatened by their ex partners. If reported to the police, the communal authorities and/or the State Administration no action was taken. Almost invariably the Danish authorities take the side of the Danish father. Legislation on stalking in Denmark was not enforced. One mother testified that a policeman had told her that her ex-husband "would have to kill you before we can do something".

According to a study by a Danish university 79 % of 200 interviewed mothers with abusive partners suffers from post-traumatic stress, all children suffered psychological abuse and 10% of the children were sexually abused while being with their fathers.

About half of those present said their ex-partners were members of an organisation of fathers. This organisation helps fathers and instructs them on how to "best" prepare court cases and deal with authorities. It was stated that some mothers did not dare to come to the meeting as they feared the fathers' organisation.

Meeting with Danish Ombudsman

At the meeting with representatives of the Danish Ombudsman it was explained that the Ombudsman is competent to investigate administrative procedures. However, he can only investigate after the final stage in a procedure and all administrative complaints procedures have been exhausted.

The Ombudsman cannot deal with complaints against the police. He can investigate complaints against the State Administration, but only at the administrative level *i.e.* whether rules have been respected. The Ombudsman's Children's Office can inspect institutions and foster homes. Cases are dealt with only in writing and the Ombudsman cannot hear witnesses.

The representatives were not able to give numbers on complaints received against the State Administration in international custody/abduction cases. On discrimination of foreigners no numbers could be provided either, since cases were not registered on substance but on the authority complained about.

Conclusions

Although officially invited by the Chair of the Committee on Petitions the Minister of Social Affairs and Integration, the Minister of Justice and the Chief of the Danish police did not find the time to meet the delegation. This was very unpleasant and in strong contrast with experiences and usual modalities in other fact-finding visits of the Committee on Petitions.

This fact-finding visit was first one without *ex-officio* Members from the country visited.

In its meetings with the officials of ministries and police the delegation met with reluctance on the part of the Danish interlocutors to discuss cases reported to the Committee as well as

with a defensive, formal and legalistic approach when asked specific questions. Members had the impression that the Danish authorities were in denial that there was a problem with cross-border custody cases as well as cases of kidnapping and violence.

The delegation felt that if the Ministers and the Chief of Police had participated, a more meaningful and especially more detailed discussion with regard to the Parental Responsibility Act would have been possible. Unfortunately, up to this date the delegation did not receive any answers to the questions raised in the meeting.

Impacts of the Danish custody law seem to be disproportionately hard on mothers. In practice Danish citizens (in particular fathers) have a strong advantage in custody conflicts, and Danish mothers as well as non-Danish EU-citizens and third country citizens feel they are being discriminated against by the Danish authorities. In particular, this even leads to the rights of the children not being respected.

Danish authorities seem to be focussed on respect of the rules and Danish "issues" rather than the best interest of the child. A common complaint was that authorities did not listen and act on reports of violence and abuse. Despite reports and warnings by mothers, relatives, educators and doctors, the authorities and the police did not intervene to safeguard the best interest of the children and protect them against violence. In some cases, this also concerns the mother who would expect protection against violence and abuse, and finds herself left without the appropriate support and protection.

The Danish Parental Responsibility Act on the one hand demands that a child is protected against harm while on the other it makes contacts between the child and both parents obligatory. A common complaint of the petitioners was that the State Administration is very strict in applying the law as concerns contact while turning a deaf ear to warnings and ignoring the right of the child to be protected and the right of the mother to protect it.

Mothers felt that the current Danish law offers no possibilities for them to protect their children from abuse by fathers. They also raised doubts about the professional qualifications of State Administration staff and pointed out there were significant differences in treatment depending on who handled their case as well as a serious problem with regard to the time taken in processing cases.

Under the current Parental Responsibility Act a parent (mother) risks losing custody of her child(ren) just because she is going to move, since the other parent will then most likely receive custody and habitual residence of the children.

To the delegation it seemed that a Danish parent who has been given custody rights by a Danish court - even retrospectively - is free to abduct a child, "bring" it to Denmark and go unpunished even though the child had its habitual residence in another country.

The delegation wondered why the Danish authorities seemed to protect a Danish father who was convicted in another EU country and had even admitted to having abducted his child to Denmark.

From the cases known to the delegation it appeared that it was only mothers (Danish and non-Danish) who have been either threatened with or judged on the grounds of § 215.

In these cases these mothers felt that they and their children were not being respected with regard to several rights, such as human rights and their rights under the Charter of Fundamental Rights. The delegation has not heard of any case of a Danish father having been treated this way. It should also be stated that several petitioners present had already experienced arrest.

The delegation was made aware of the circumstances that Danish lawyers often inform about what is done "in practice" (customary law).

The delegation was also made aware of criminally relevant cases and the Members decided to hand over those cases to the Danish prosecution.

The Danish Ombudsman took a rather formalistic position and did not seem to be aware of the number of cases concerning international custody/abductions in Denmark. His office stated that there was no discrimination, as it was "not registered as such".

Recommendations

The petitions received by the Committee on Petitions regarding custody law will be forwarded to the Danish authorities for an opinion.

Denmark is urged to immediately follow-up its own resolutions and confirmations once issued and thus, to fully implement and enforce the Hague Convention on the Civil Aspects of International Child Abduction.

Denmark is urged to ensure full and immediate compliance by all government departments with the Child Protection Convention (which it signed on Oct 1, 2011). The respect of this Convention is vital for all children concerned.

The Children's Office of the Danish Ombudsman should ensure that the Child Protection Convention is implemented in Danish law and administration. The Office of the Danish Ombudsman should also ensure that all cases of discrimination are registered, especially cases involving foreigners.

The Danish Ombudsman should be obliged to work more efficiently when dealing with such cases, paying particular attention to instances of potential discrimination on the grounds of nationality or gender and should be granted the necessary means to act by the State of Denmark.

At the Social Services a committee of three independent persons should be installed in order to help and provide support with cases of reported abuse/violence and discrimination with regard to Danish and non-Danish mothers as well as non-Danish fathers and their children.

Once a mother has been allocated to a safe-house with her children the above-mentioned committee shall be made responsible for their safety and health and to ensure full compliance with current EU human rights and law as well as with international conventions.

The Danish parliament as well as the Head of Police, the High Court, the Head of the State Administration and the Ministers of Social Affairs and Justice should investigate the cases

brought to the attention of the Committee on Petitions with a view to ensuring that the Parental Responsibility Act is enforced and reviewed in such a way that foreign and Danish citizens are treated equally, especially with regard to EU law and legislation.

Denmark is urged to review these custody and visitation rights as well as international child abduction cases in order to ensure full compliance with international human rights and EU laws and legislation, and to do so within the shortest time possible since the well-being and safety of children is at stake. Foreign mothers and fathers (EU citizens as well as non-EU citizens) must be ensured equal rights with regard to custody.

The relevant ministries (Justice and Social Affairs) and the courts are urged to keep the right of access to the case files open for interested parties in cases of custody, visitation, kidnapping and discrimination; such files should not be destroyed after four weeks.

The Danish opt-out from certain provisions of the Treaty does by no means exclude Denmark from fully respecting its political obligations under the Charter of Fundamental Rights, the European Convention on Human Rights and the Hague Convention. Denmark is urged to finally implement the Brussels IIA Regulation. It cannot be acceptable that as a direct result of an opt-out from Treaty provisions, legal uncertainty is produced which severely impacts on international child custody cases, which in turn can seriously jeopardise the fundamental rights of the child causing unnecessary additional trauma and suffering to all concerned, especially the child.

The European Commission is urged to review these cases on a regular basis in order to ensure that the Charter of Fundamental Rights and the EU Treaty are being applied fully.

More cooperation and exchange of information between the European Commission and the Member States is needed, in particular on issues concerning human rights, especially in the case of the issues brought to the attention of the Committee on Petitions.

ANNEX 1 - MAIN PETITIONS

Petition 0954/2012 by Vincenzo Antonuccio (Italian), on alleged treatment in violation of human rights by the Danish authorities

Petition 0963/2012 by Marie Kathleen Denise Arce-Aspelin (Filipino), on her unsustainable situation in Denmark

Petition 0964/2012 by Fabrizio Infante (Italian), on lack of contact with his daughter living in Denmark

Petition 0965/2011 by Tammy Nørgård (American), on the Danish authorities' alleged infringement of human rights

Petition 0966/2012 by Kent Cooper (American), on alleged discrimination by the Danish authorities

Petition 1078/2012 by Marion Weilharter (Austrian), on the dispute over her child's abduction and on the enforcement of the Hague Agreement by Denmark

Petition 1314/2012 by Irina Vladimirovna Ziboreva (Russian), on discrimination on the basis of nationality in a custody battle

Petition 1420/2012 by Mrs Yan Maria Li (Hong Kong) on access to justice and fight for human rights in Denmark

Petition 1891/2012 by Oksana Viktorovna Jewell (Russian) on infringement of her human rights and those of her daughter

Petition 1945/2012 by Anni Nielsen (Danish) on infringement of her human rights and those of her children