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Role of the German Youth Welfare Office (Jugendamt) in cross-border family disputes**European Parliament resolution of 29 November 2018 on the role of the German Youth Welfare Office (Jugendamt) in cross-border family disputes (2018/2856(RSP))**

(2020/C 363/16)

The European Parliament,

- having regard to Article 227 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 81(3) of the TFEU,
- having regard to Article 3(3) of the Treaty on European Union,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Article 24 thereof,
- having regard to Articles 8 and 20 of the UN Convention on the Rights of the Child, which underline the obligation of governments to protect a child's identity, including his or her family relations,
- having regard to the Vienna Convention on Consular Relations of 1963, in particular Article 37(b) thereof,
- having regard to the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption,
- having regard to Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIa) ⁽¹⁾, in particular Articles 8, 10, 15, 16, 21, 41, 55 and 57 thereof,
- having regard to Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 ⁽²⁾,
- having regard to the Commission communication of 15 February 2011 on an EU Agenda for the Rights of the Child (COM(2011)0060),
- having regard to the case law of the Court of Justice of the European Union (CJEU), notably its rulings of 22 December 2010 in case C-497/10 PPU, *Mercredi v Chaffe* ⁽³⁾, and of 2 April 2009 in case C-523/07, proceedings brought by A ⁽⁴⁾,
- having regard to the mapping of the child protection systems carried out by the European Union Agency for Fundamental Rights,
- having regard to the very large number of petitions received on the role of the German Youth Welfare Office (Jugendamt) in cross-border family disputes,
- having regard to the recommendations made in the report on the fact-finding visit to Germany (23-24 November 2011) to investigate petitions concerning the role of the German Youth Welfare Office (Jugendamt),

⁽¹⁾ OJ L 338, 23.12.2003, p. 1.

⁽²⁾ OJ L 324, 10.12.2007, p. 79.

⁽³⁾ Judgment of the Court (First Chamber) of 22 December 2010, *Barbara Mercredi v Richard Chaffe*, C-497/10 PPU, ECLI:EU:C:2010:829.

⁽⁴⁾ Judgment of the Court (Third Chamber) of 2 April 2009, A, C-523/07, ECLI:EU:C:2009:225.

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- having regard to its resolution of 28 April 2016 on safeguarding the best interests of the child across the EU on the basis of petitions addressed to the European Parliament ⁽¹⁾,
 - having regard to the recommendations of 3 May 2017 of the Committee on Petitions' Working Group on Child Welfare Issues,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas 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;
- B. whereas the Committee on Petitions relies mainly on the subjective report of the petitioner and generally does not have access to judicial decisions that give a full and objective description of the situation, containing testimonies of both the parents, the children and witnesses;
- C. whereas the Jugendamt plays a central role in the German family law system, as it is one of the parties in all family disputes involving children;
- D. whereas in family disputes involving children, the Jugendamt delivers a recommendation to the judges, the nature of which is practically binding, and can adopt temporary measures, such as the 'Beistandschaft' (legal advisership), which cannot be challenged;
- E. whereas the Jugendamt is responsible for the implementation of the decisions taken by the German courts; whereas the broad interpretation of these decisions by the Jugendamt has, according to petitioners, often been detrimental to the effective protection of the rights of non-German parents;
- F. whereas the non-recognition and non-enforcement by the competent German authorities of decisions and judgments taken by other EU Member States' judicial authorities in family disputes having cross-border implications can represent a breach of the principle of mutual recognition and mutual trust among Member States, thus jeopardising the effective protection of the best interests of the child;
- G. whereas petitioners denounced the fact that in family disputes having cross-border implications the protection of the best interests of the child is systematically interpreted by the competent German authorities with the need to ensure that children remain on the German territory, even in cases where abuse and domestic violence against the non-German parent have been reported;
- H. whereas non-German parents denounced in their petitions the insufficient counselling and legal support, or the lack thereof, provided by the national authorities of their country of origin in cases where alleged discriminatory or disadvantageous judicial and administrative procedures were adopted against them by the German authorities, including the Jugendamt, in family disputes involving children;
- I. whereas according to the information provided by the European Court of Human Rights, there have been 17 cases lodged with the Court against Germany by non-German petitioners on parental responsibility or child custody in cross-border family disputes, all of them assessed as inadmissible;
- J. whereas all EU institutions and Member States must fully guarantee the protection of the rights of the child as enshrined in the Charter of Fundamental Rights of the EU; whereas the best interests of the child, primarily and best realised within its own family, is a fundamental principle that should be respected as a guiding rule for all decisions related to childcare issues at all levels;

⁽¹⁾ OJ C 66, 21.2.2018, p. 2.

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- K. whereas increased mobility within the EU has led to a growing number of cross-border disputes on parental responsibility and child custody; whereas the Commission must step up its efforts to promote in all Member States, including Germany, the consistent and concrete implementation of the principles set out in the UN Convention on the Rights of the Child, ratified by all EU Member States;
- L. whereas the scope and objectives of the Brussels IIa Regulation are based on the principle of non-discrimination on the grounds of nationality between citizens of the Union and on the principle of mutual trust between the Member States' legal systems;
- M. whereas the provisions of the Brussels IIa Regulation should in no way allow for any abuse of its underlying aims of ensuring mutual respect and recognition, avoiding discrimination on the grounds of nationality and, first and foremost, truly protecting the best interests of the child in an objective manner;
- N. whereas the absence of accurate and detailed checks on the non-discriminatory nature of procedures and practices adopted by the German competent authorities in family disputes having cross-border implications involving children can have detrimental effects on children's welfare and lead to increased violation of rights for non-German parents;
- O. whereas the subsidiarity principle applies in all matters of substantive family law issues;
- P. whereas the German Federal Constitutional Court ruled that a court can ask to hear a child who is still not quite three years old at the time of the decision; whereas in other EU Member States children of this age are considered too young and not mature enough to be consulted in disputes involving their parents;
- Q. whereas the child's right to family life should not be threatened by the exercise of a fundamental right such as the freedom of movement and residence;
- R. whereas the case law of the CJEU establishes the autonomous notion in EU law of the 'habitual residence' of the child and the plurality of the criteria to be used by the national jurisdictions to determine the habitual residence;
- S. whereas it follows from Article 24 of the Charter of Fundamental Rights of the EU that, unless contrary to the interests of the child, children have the right to uphold on a regular basis a personal relationship and direct contact with their parents when their parents are exercising their right to free movement;
1. Notes with great concern that problems concerning the German family law system, including the controversial role of the Jugendamt, denounced through petitions by non-German parents, still remain unsolved; underlines that the Committee on Petitions continuously receives petitions by non-German parents in which serious discrimination is reported as a result of the procedures and practices concretely adopted by the competent German authorities in cross-border family disputes involving children;
 2. Notes with concern all cases of alleged discrimination against non-German parents by the Jugendamt;
 3. Points to the long-standing work of the Committee on Petitions on the treatment of petitions concerning the role of the Jugendamt; takes note of the responses given by the competent German ministry on the functioning of the German family law system, but underlines that the Committee on Petitions continuously receives petitions concerning alleged discrimination against the non-German parent;
 4. Stresses 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; is concerned 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; underlines 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;

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5. Regrets 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;

6. Recalls the Commission's reply with respect to the petitions on the role of the Jugendamt in cross-border family disputes; reiterates that the EU has no general competence to act in matters of family law, that substantive family law remains the sole responsibility of the Member States and cannot be monitored by the Commission, that, in case of concern about the functioning of the Jugendamt, redress must be sought at national level, and that if parents consider that any of their fundamental rights have been violated, they may lodge a complaint with the European Court of Human Rights in Strasbourg, once the domestic remedies have been exhausted;

7. Insists on the importance of Member States collecting statistical data on the administrative and judicial proceedings concerning child custody and involving foreign parents, particularly on the outcome of the judgments, in order to allow for a detailed analysis of existing trends over time and to provide benchmarks;

8. Emphasises, in accordance with the case law of the CJEU, 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;

9. Calls 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;

10. Strongly criticises 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 for such data to be collected and made publicly available;

11. Calls 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;

12. Condemns the fact that, in cases of supervised parental access, the failure by non-German parents to comply with the Jugendamt officials' procedure to adopt German as the 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; believes that this procedure adopted by the Jugendamt officials constitutes clear discrimination based on origin and language against non-German parents;

13. Stresses that the Jugendamt generally allows the use of a common mother tongue and, if needed for the child's well-being and safety, such as in possible abduction cases, they endeavour to provide an interpreter in order to ensure that the Jugendamt officials understand the content of the discussion;

14. Is firmly convinced that in cases of supervised parental access, the German authorities must permit all parental languages during conversations between parents and their children; asks for mechanisms to be put in place to guarantee that non-German parents and their children can communicate in their common language, as the use of this language plays a crucial role in maintaining strong emotional bonds between parents and their children and ensures the effective protection of children's cultural heritage and welfare;

15. Firmly believes that consistent and effective follow-up must be given 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;

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16. Reminds Germany of its international obligations under the UN Convention on the Rights of the Child, including Article 8 thereof; believes that major improvements must be made by all German competent authorities to adequately safeguard the right of the children of binational couples to preserve their identity, including family relations, as recognised by law without unlawful interference;
17. Considers 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;
18. Calls on the Commission to ensure that accurate checks are carried out on the non-discriminatory nature of procedures and practices used in the German family law system, including by the Jugendamt, in the framework of cross-border family disputes;
19. Reiterates that the principle of subsidiarity applies in matters of substantive family law;
20. Calls 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;
21. Emphasises the importance of close cooperation and efficient communication between the different national and local authorities involved in childcare proceedings, from the social services to the jurisdictional and central authorities;
22. Stresses the need to improve mutual judicial and administrative cooperation between the German authorities and the authorities of the other EU Member States in order to ensure mutual trust in matters concerning the recognition and enforcement in Germany of decisions and judgments adopted by other EU Member States' authorities in family disputes having cross-border elements involving children;
23. Recalls the importance of providing non-German parents without delay, from the outset and at every stage of child-related proceedings, with complete and clear information on the proceedings and on the possible consequences thereof, in a language that the parents in question fully understand, in order to avoid cases where parents give their consent without fully understanding the implications of their commitments; calls on the 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;
24. Stresses that the denounced instances whereby non-German parents are prevented from communicating with their children in their common mother tongue during visits constitute discrimination on the grounds of language, and are also contrary to the aim of fostering multilingualism and diversity of cultural backgrounds within the Union and in breach of the fundamental rights of freedom of thought, conscience and religion;
25. Calls on Germany to step up its efforts in order to ensure that parents are allowed to use a common mother tongue with their children during supervised visits;
26. Expresses 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; stresses the right of citizens to refuse to accept documents that are not written or translated into a language they understand, as laid down in Article 8(1) of Regulation (EC) No 1393/2007 on the service of documents; calls on the Commission to thoroughly assess the implementation in Germany of the provisions of this regulation in order to properly address all possible violations;
27. Calls on the Commission to verify the respect of language requirements in the course of proceedings before the German jurisdictions in the cases mentioned in the petitions presented to the European Parliament;

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28. Calls on the Member States to implement targeted measures aimed at improving legal support, aid, counselling and information for their nationals in cross-border family disputes involving children; notes, in this context, that the competent German ministries at federal level have established the German Central Contact Point for Cross-border Family Conflicts in order to provide counselling and information in cross-border family disputes involving parental responsibility;
 29. Reiterates its call on the Commission and the Member States to co-finance and promote the establishment of a platform providing assistance to non-national EU citizens in family proceedings;
 30. Reminds the Member States about the importance of systematically implementing the provisions of the Vienna Convention of 1963 and of ensuring that embassies or consular representations are informed from the start of all childcare proceedings involving their nationals and have full access to the relevant documents; stresses the importance of trustworthy consular cooperation in this field and suggests that consular authorities should be allowed to attend every stage of the proceedings;
 31. Reminds the Member States of the need to provide the child with any necessary and justified foster care in accordance with the wording of Articles 8 and 20 of the UN Convention on the Rights of the Child, and in particular to enable continuous childcare that takes into account the child's ethnic, religious, linguistic and cultural identity;
 32. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.
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