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Human rights and family courts

Motion for a resolution

tabled by Mr Paul ROWEN and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

The Assembly recognises that the protection of human rights is one of the Council of Europe's core values. It recognises that children are particularly vulnerable and that systems must be in place to protect those children considered "at risk".

The Assembly believes, however, that those who are tasked with protecting children need to be accountable for their actions and need to operate in a way which protects the human rights of all the people they are dealing with.

The Assembly notes the recent judgment of the European Court of Human Rights, *X. v. Croatia* (Application No. 11223/04) dated 17 July 2008, which held unanimously that there had been a violation of Article 8 (right to respect for private and family life) on account of the applicant's exclusion from the proceedings which resulted in her daughter being adopted.

The Assembly believes that the use of mental incapacity by Croatia to exclude a person from involvement in their children's future is wrong and not only violates Article 6 (right to a fair trial) but also Article 8 (right to family life) and Article 13 (right to an effective remedy).

The Assembly notes that in the United Kingdom, the 1989 Children's Act is the main legislation governing child protection and that Cafcass (the Children and Family Court Advisory and Support Service) provides guardians *ad litem* for children in care cases.

The Assembly further notes that since the start of 2008, when Ofsted (Office for Standards in Education) became the regulator for Cafcass, it has issued two reports which have criticised the standards used by Cafcass. It said: "Inspectors could not find evidence about how service managers satisfy themselves that family court advisers are reaching sound conclusions in order to make the right recommendations to courts about children's lives". It found that "most reports contain recommendations to the court that fail to take account of a key principle of the Children's Act that there should be minimum state intervention in family life".

The Assembly notes that there are over 100 cases a year in England and Wales in which an organ of the state (the Official Solicitor) displaces a parent in proceedings which may lead to the adoption of their child or children.

The Assembly further notes that mothers have had their children removed because they were victims of domestic violence or on the basis of medical evidence for which there had been no second opinion.

The Assembly further notes that England habitually gives judgment in family proceedings without the judgment being in public (in conflict with Article 6). This Assembly notes that there can be an argument for anonymity, but not for the reasoning of the court to be kept secret which means that the court's reasoning is not properly accountable.



The Assembly believes that these reports and concerns provide evidence of possible violation by the United Kingdom of Articles 6, 8 and 13.

The Assembly notes that Portugal also operates a system of forcible adoption where the parents, having not willingly given up their parental rights, have children forcibly adopted away from them.

The Assembly therefore believes that there is sufficient evidence and concern about the operation of family courts in relation to the European Convention on Human Rights in Croatia, Portugal and the United Kingdom to request that an investigation be carried out.

Signed (see overleaf)

Signed¹:

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