Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 235 (2002)[1]

Draft Convention on contact concerning children

Parliamentary Assembly

1. During the past decades, the incidence of child abduction by one parent – very often across borders – has increased dramatically. Less well known, but equally worrying, is another trend which is becoming more frequent, whereby the parent having custody of the child refuses to allow the child either national or transfrontier contact with the other parent. As is so often the case, both trends hurt the most vulnerable most: the children caught in the middle, who are deprived of their right to maintain personal relationships with their parents, and with other people to whom they have close ties, for example grandparents or former foster parents.

2. The Assembly thus welcomes the timely drafting of a convention on contact concerning children. The draft conventionaims at setting up an improved system of contact, which would assist children in maintaining regular contact with both their parents and with other people with whom they have family or other ties. There can be no doubt that personal contact is the most important form of contact. The Assembly considers the draft convention to be well geared to the aims it is meant to achieve, and finds that it complements the other relevant international legal texts well.

3. It is not absolutely certain that the same principles should apply both to cases where children are in public care and to civil law cases between family members. Children in public care may need special considerations that have not been included in the draft convention. However, states parties could be encouraged to extend the application of the convention to include children in public care.

4. The Assembly has long warned against the possible pernicious consequences of conventions drafted à la carte, allowing states parties to pick and choose by which provisions they wish to be bound. The Assembly thus welcomes the fact that the draft convention on contact concerning children permits no reservations. However, it regrets that the draft convention is none the less drafted in a way which allows states considerable margins of appreciation. Considering that the draft convention is, in most aspects, very modern and far-reaching, it would be preferable if the convention could leave less to the determination of the domestic law of each state.

5. This is particularly true of the proposed innovative safeguards and guarantees enumerated in Article 10. In the Assembly's opinion, states should be encouraged to choose more than onlythree of the many measures proposed. In particular, states parties should be obliged to choose at least one of the two latter options enumerated in Article 10.2.a to ensure that contact takes place, and two or more of those enumerated in Article 10.2.b to ensure that the child is not improperly removed or retained after a period of contact. Some of these provisions could perhaps even be further extended to cover punitive and criminal sanctions in appropriate cases, in particular when persons improperly remove or do not return children. (To make the draft convention more easily readable, the different measures in Article 10 should, in addition, be numbered in small roman numerals, i, ii, iii, etc.).

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 26 March 2002 (seeDoc. 9370, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs López González).

6. Chapter III of the draft convention focuses on measures to promote and improve transfrontier contact, defining the duties of central and judicial authorities in this field. The Assembly recommends that the Committee of Ministers enrich the text of the provisions regarding co-ordination between the administrative and judicial authorities, especially as regards the execution of contact orders and the return of children improperly removed, to avoid subsequent problems in the implementation of the convention