Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2194 (2017)[1]

Cross-border parental responsibility conflicts

Parliamentary Assembly

1. More and more couples in Europe are binational. This is a positive evolution, except in cases of separation. Unfortunately, when the couple concerned has one or more children, the often already difficult situation in terms of the sharing of parental responsibility following a separation is further complicated by different national legal systems, cultures and expectations, and can lead to cross-border parental responsibility conflicts and even child abductions.

2. The international and European legal instruments which govern these situations are based on the concept of a fair balance being struck between competing interests (those of the child, of the two parents and of public order), while guaranteeing the primacy of the child's best interests. The objectives of preventing child abduction and the immediate return of abducted children have been judged by the European Court of Human Rights to correspond to a specific conception of "the best interests of the child" in this context.

3. The 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, as well as the applicable European Union regulations for European Union member States, thus aim to protect children from the harmful effects of their wrongful retention in, or removal to, a State other than their State of habitual residence. For this purpose, these texts provide for common rules on jurisdiction, applicable law, recognition and enforcement in the field of parental responsibility and child protection. These legal instruments establish a system of State co-operation through "central authorities" that assist individuals concerned in each contracting State in resolving cross-border family disputes and set short deadlines for the court proceedings to return the child to the State of his or her habitual residence.

4. However, in practice, the deadlines are seldom met, and the enforcement of decisions taken can be complicated and costly. The geographical scope of the key legal instruments remains limited and they are not always properly applied, even in States bound by them (as attested by several judgments of the European Court of Human Rights). For example, the views of the child are not always heard and/or adequately taken into account. In addition, cases in which the primary or sole carer of the child abducts the child are particularly difficult, as the abducting parent may not be in a position to accompany the child back to the State of his or her habitual residence, thus leading *de facto* to a situation which may violate a child's right not to be separated from his or her parents and to maintain personal relations and direct contact with both parents on a regular basis.

5. The Parliamentary Assembly thus recommends that Council of Europe member States make the enforcement of a parental responsibility decision abroad simpler, speedier and less costly, by:

5.1. helping to widen the geographical scope of the key legal instruments and ensure their proper application in all countries bound by them, including their own (for example, by making information widely available to the general public and professionals concerned);

5.2. streamlining the processing of cases of child abduction or retention in the context of cross-border parental responsibility conflicts, including by limiting the number of appeals possible and by doing away with onerous requirements of exequatur for the enforcement of decisions taken;

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 24 November 2017 (see Doc. 14435, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Martine Mergen).

5.3. finding a way to better deal with cases in which the primary or sole carer abducts or does not return the child or children concerned, by giving particular weight to their views in such cases;

5.4. seeking to guarantee that the views of the child or children concerned are heard and taken into account in an adequate manner in all cases;

5.5. ensuring the proper specialisation of professionals concerned and good co-operation between the central authority and other national authorities;

5.6. promoting properly (and internationally) recognised mediation services and agreements in cross-border parental responsibility conflicts.