Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14504
21 February 2018

Gender equality and child maintenance

Committee Opinion[1]
Committee on Social Affairs, Health and Sustainable Development
Rapporteur: Ms Liliane MAURY PASQUIER, Switzerland, Socialists, Democrats and Greens Group

A. Conclusions of the committee

The Committee on Social Affairs, Health and Sustainable Development welcomes the report prepared by Ms Gisela Wurm (Austria, SOC) for the Committee on Equality and Non-Discrimination. It fully supports the recommendations that the Council of Europe member States should ensure that child maintenance payments are paid fully and on time, and, in cases of non-compliance, should substitute themselves and advance payment in the best interests of the child.

However, the report submitted to the Parliamentary Assembly by the Equality Committee focuses on the gender equality aspect of child maintenance. It is important to keep in mind that child maintenance is the right of the child (as guaranteed by the United Nations Convention on the Rights of the Child), not of a parent of whatever gender.

Thus, whilst fully agreeing with the aims of the Equality Committee, the Social Affairs Committee wishes to propose a number of amendments to ensure that a few specific aspects of the particular situation of children are better highlighted in order to create greater awareness among law- and policy makers.

B. Amendments to the draft resolution

Amendment A (to the draft resolution)

At the end of paragraph 4, add the following words:

"and provide children with equal opportunities in life."

Amendment B (to the draft resolution)

In paragraph 5, after the words "intentional non-compliance", add:

", irregular"

Amendment C (to the draft resolution)

At the end of paragraph 5, add the following sentence:

"Children in particular can be traumatised by witnessing domestic violence of any kind."

1. Reference to committee: Doc. 13892, Reference 4162 of 27 November 2015. Reporting committee: Committee on Equality and Non-Discrimination. See Doc. 14499. Opinion approved by the committee on 25 January 2018.

Amendment D (to the draft resolution)

At the end of paragraph 6, add the following words:

"and which entered into force on 1 August 2014 in all European Union countries except Denmark."

Amendment E (to the draft resolution)

At the beginning of paragraph 7.2.1, insert the following words:

"in the best interests of the child,"

Amendment F (to the draft resolution)

At the end of paragraph 7.2.1, add the following words:

"with no or minimal fees for the recipient;"

Amendment G (to the draft resolution)

After paragraph 7.2.5, add the following paragraph:

"promote mediation between separated parents as a means of overcoming conflicts over child maintenance payments;"

C. Explanatory memorandum by Ms Liliane Maury Pasquier, rapporteur for opinion

1. As rapporteur of the present opinion, I very much appreciate my colleague Ms Gisela Wurm's comprehensive summary of the situation in Europe regarding changing family patterns and their effects on gender equality, as well as the detailed case studies on child maintenance systems in Albania, France, the United Kingdom, Spain and Ukraine. I can fully support her recommendation that the Council of Europe member States should ensure that child maintenance payments are paid fully and on time, and, in cases of non-compliance, should substitute themselves and advance payment in the best interests of the child.

2. However, Ms Wurm focused specifically on the gender equality aspect of child maintenance. It is important to keep in mind that child maintenance is the right of the child (as guaranteed by the United Nations Convention on the Rights of the Child) – not of a parent of whatever gender.[2] As rapporteur for opinion of the Social Affairs Committee, I will thus put the focus on the children's rights perspective, recalling the principles which also underlie the recent Assembly Resolution 2194 (2017) on cross-border parental responsibility conflicts: whether we are talking about the sharing of parental responsibility, about contact, or about child maintenance, the international and European legal instruments which govern these situations are based on the need to strike a fair balance between competing interests (those of the child, of the parents and of public order), while guaranteeing the primacy of the child's best interests.

3. So, what exactly are the child's rights? In accordance with the United Nations Convention on the Rights of the Child:[3]

– a child has "as far as possible, the right to know and be cared for by his or her parents" (Article 7.1);

– "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (Article 9.3).

– "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child" (Article 18.1).

– "States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad" (Article 27.4)

2. Even if, in most cases, child maintenance is paid to the custodial parent, not to the child itself.
3. In force in every country in the world except the United States.

4. It is on this basis that most Council of Europe member States have developed a system of child maintenance payments, usually paid by the non-custodial parent (the "paying" parent) to the custodial parent (the "receiving" parent).[4] As Ms Wurm's explanatory memorandum rightly points out, however, the systems differ enormously; often, only a child's minimum needs will be covered, and few are the countries (such as my own, Switzerland) which consider that the child has the right to the standard of living of both parents, not just the standard of living of the custodial one.[5] It is also important to underline that in the vast majority of cases, child maintenance payments are significantly lower than the actual cost of raising a child. This means that children are not provided with equal opportunities in life if the custodial parent cannot make up the difference between the child maintenance payments and the cost of raising a child (see Amendment A). Hence the generally higher rates of child poverty observed in single-parent families.

5. Obviously, the risk of poverty rises when there is non-compliance with child maintenance payment obligations, be that intentional or non-intentional non-compliance (for example, because the "paying" parent has become unemployed or can no longer fulfil his/her payment obligations for other objective reasons). This is why some countries, such as my own (as well as France, Germany and the United Kingdom, as described in Ms Wurm's case studies), have instituted systems which make it possible for the State to advance payment,[6] and why all States should do so, in the best interests of the child (see Amendment E).

6. However, the State's services are seldom free of charge, even for the recipient: in my own country, costs may have to be born by the "receiving" parent if the "paying" parent cannot pay them, and in the United Kingdom, the service incurs a 4% charge for the "receiving" parent (in addition to a 20% charge for the "paying" parent). This can act as a deterrent to "receiving" parents to make use of the State's services, in particular if the non-compliance is not total (i.e. in case of irregular – see Amendment B – and/or partial compliance). This is why it is important that such services entail no or minimal fees for the recipient (see Amendment F).

7. Ms Wurm is correct that intentional non-compliance with child maintenance payment obligations can constitute psychological violence, and should be sanctioned as such. It is very important in this context to remember that children in particular can be traumatised by witnessing domestic violence of any kind (see Amendment C).

8. Even more importantly, it is vital to find sanctions that work, i.e. sanctions which are going to persuade an intentionally non-compliant parent to pay child maintenance again (as well as arrears). Most States in the United States have the possibility to suspend or revoke professional or other licences (such as a driving licence) for intentional non-compliance, which can be considered a good practice that could inform European policy.

9. In paragraph 3 of this explanatory memorandum, I detailed a child's rights, which include the right to contact with both parents. I am thus not in favour of sanctioning a non-compliant parent by reducing contact rights; this would violate, first and foremost, the child's rights to contact. It would also make it possible for an adult who does not wish to assume a parenting role to avoid the only support he or she can be forced to give: financial support.

10. Finally, allow me to recall that adults should behave like adults… and children should not be made to pay the price of adults' disagreements and conflicts. This is why I would like to propose (see Amendment G), that mediation between separated parents be promoted as a means of overcoming conflicts over child maintenance payments.

---

4. In the words of the United Kingdom, from the parent who does not have day-to-day care of the child to the parent who does (www.gov.uk).

5. Indeed, in the United Kingdom, if day-to-day care of a child is shared equally, the "paying" parent may not have to pay any child maintenance for that child (ibid). This may lead to situations in which the primary motivation to share care is not having to pay maintenance, which may not be in the best interests of the child.

6. In Germany, advance payment is limited to the minimum child maintenance, currently between 150 and 268 euros per month (www.unterhalt.net). This can increase the risk of child poverty.