European Union: Intercountry adoption and cross-border child protection

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The European Union promotes an active child-rights implementation strategy, aimed at their best interests, ensuring their utmost well-being and safety, in accordance with the Treaty of Lisbon and the EU Charter of Fundamental Rights. Indeed, the EU is strongly committed to the implementation of the UNCRC and its Optional Protocols. Moreover, an EU Agenda for the Rights of the Child has been adopted by the European Commission, aimed at reinforcing the promotion, protection and fulfilment of children’s rights within the EU framework. Concrete tools have also been developed by the EU Agency for Fundamental Rights (FRA) as well as by the Council of Europe and the European Court of Human Rights (see pp. 3 and 7).

EU legal framework on Private International Law, civil matters and family law

The EU promotes a judicial cooperation system, in particular with regard to transnational civil matters and the recognition of judicial decisions, as well as the adoption of measures in the area of Private International Law. The Committee on Legal Affairs, which is part of the wider range of the European Parliament’s Committees, is responsible for the right interpretation and implementation of European Law and the Member States’ compliance with relevant EU instruments (regulations and directives) and policies. The Committee is also competent for the adoption of measures concerning judicial and administrative cooperation in civil matters.

The EU Member States apply relevant Family Law instruments, such as the Brussels IIA, Rome I, Rome II and Rome III Regulations. Moreover, the HC-1993 and HC-1996, which focus on child...
protection measures, are implemented in the territory of the EU Member States.

However, with regards to the specific issues of adoption, the EU has not yet provided harmonised and systematic legislation. Furthermore, the EU – through the Committees on Legal Affairs and on Petitions – may adopt measures in the field of Family Law with cross-border implications. To this end, a workshop was organised in order to identify concrete solutions.

**Challenges for the recognition of transnational measures**

Although the EU’s institutions are trying to create a harmonised legislative and administrative framework in the field of Family Law and specific issues, such as family status, maintenance obligations, assisted reproductive technologies and child protection measures, the diversity of domestic laws and cooperation between Courts/Tribunals, Central Authorities and other competent bodies, such as social services, with regards to the exchange of information and the implementation of multilateral agreements, does not yet allow for a consistent transnational recognition of measures. Moreover, children’s fundamental rights remain at risk of being denied or jeopardised.

**Concrete solutions**

In this regard, the European Parliament – represented by the European Committees on Legal Affairs and on Petitions – decided to organise a workshop in order to discuss the steps forward. During the debate, concrete and practical solutions were envisaged as follows:

- A Memorandum of Understanding between Authorities was suggested in order to strengthen cooperation and accelerate procedures related to transnational cases affecting children;
- (In an Ombudsperson’s opinion), first of all, the judge must interpret the adoption though a case-by-case approach on the best interests of the child (child’s opinion and child’s consent); secondly, a domestic adoptive family or, subsequently, a foreign family, should be sought through the accredited adoption bodies that wish to cooperate with Central Authorities. These accredited bodies are listed in public documents compiled by relevant public authorities and relevant Ministries;
- Mutual recognition of marital status by all Member States is proposed. Moreover, a shared decision process and EU legislation that may be binding upon all Member States are envisaged;
- The benefits of the HC-1993 should be reminded in the field of intercountry adoption and its automatic recognition in all Contracting States, following the peremptory principles of the UNCRC;
- Mandatory recognition by all Member States of domestic adoption through a judicial process aimed at providing certainty on the adopted child’s status;
- Concerning the prohibition of adoption under Islamic Law, a careful analysis of the different Muslim jurisdictions, in particular regarding alternative care measures or short-term protection processes (Iraqi Damm, Iranian Sarparasti, Moroccan and Tunisian Kafalah, Algerian Kafalah), showed how the legal structures, as a basis for potential adoption legislation, are taken into consideration in these countries. Moreover, awareness-raising through seminars and trainings, aimed at involving Muslim jurisdictions in Western mechanisms, has been recalled for the recognition of foreign adoptions and the potential adherence to relevant international agreements, such as the Hague Conventions, and for reformulating and widening the definition of adoption.

The ISS/IRC acknowledges the importance of the joint meeting organised within the European Parliament, and recalls the step forwards identified within the meeting, towards the harmonisation of EU Member States’ legislations in the field of adoption and cross-border child protection. The ISS/IRC is convinced that this event and related challenges will certainly support and inspire other initiatives, promoted by worldwide actors and facing the same issues at international level and in non-EU countries.

**References:**