



Declassified¹
AS/Soc (2017) PV 03 add
19 May 2017
Asocpv03add_2017

Committee on Social Affairs, Health and Sustainable Development

Minutes

of the exchange of views on “Parental authority conflicts” held in Strasbourg on Tuesday, 25 April 2017, from 8.30 to 9 am

The Committee held an exchange of views on *Parental authority conflicts* (*Rapporteur: Ms Martine Mergen, Luxembourg, EPP/CD*) with Ms Juliane Hirsch, Consultant on Private International Law and International Family Law;

Ms Bonet, first Vice-Chairperson, opened the hearing and welcomed the members and the expert.

Ms Hirsch first stressed the evolving approach of the definition of “parental responsibilities”. In 2004, a recommendation of the Council of Europe had defined those as “a collection of duties and powers which aim at ensuring the moral and material welfare of the child”. A recommendation of 2015 referred to “the collection of duties, rights and powers, which aim to promote and safeguard the rights and welfare of the child in accordance with the child’s evolving capacities” – this definition was more focused on the child.

Cross-border parental responsibility conflicts could be grouped in three categories: disputes in connection with cross-border relocation, with cross-border parental child abduction and other cross-border parental responsibility conflicts. She had chosen the example of abduction in her written report.

The expert then gave an overview of the legal framework applicable to cross-border family disputes:

- the UN Convention on the Rights of the Child;
- the European Convention on Human Rights;
- the EU Charter on Fundamental Rights;
- two relatively new binding conventions: the European Exercise of Children’s Rights Convention and the Council of Europe Contact Convention;
- a number of non-binding instruments: The Hague Conference Instruments of Guidance concerning relocation and mediation and several Council of Europe recommendations/resolutions/guidelines on relocation, parental responsibility, child-friendly justice and mediation;
- the 1980 Hague Child Abduction Convention containing hard and procedural law (in force in the 47 COE member States);
- the European Custody Convention;
- the 1996 Hague Child Protection Convention on jurisdiction, applicable law, recognition, enforcement and cooperation;
- the Brussels II *bis* Regulation which unified in the European Union Member States the rules on jurisdiction and recognition and enforceability of decisions and enforceable agreements.

Ms Hirsch considered that this framework assisted effectively in the resolution of cross-border family disputes. Nevertheless, a considered use of these instruments and an enlargement of the geographical scope of application to new contracting States remained necessary. Improvement was needed in four areas in particular:

- 1) to further simplify, speed up and make less costly the enforcement of a parental responsibility decision abroad;
- 2) to guarantee the specialisation of professionals dealing with these cases;

¹ Document declassified by the Committee on Social Affairs, Health and Sustainable Development at its meeting on 2 June 2017 in Baku, Azerbaijan.

- 3) to improve co-operation between Central authorities and other national authorities;
- 4) to promote agreed solutions to cross-border family disputes through specialised mediation.

[Ms Hirsch's PowerPoint presentation is available on the Committee's extranet page.]

The first Vice-Chairperson thanked the expert and opened the discussion.

Ms Mergen, rapporteur, thanked the expert for her report and enlightening presentation. This report included technical aspects with a great number of legal instruments. There was a gap between Parties to these instruments and others, mostly in Africa. The idea of the specialisation of professionals like judges and lawyers was interesting. She had retained in particular that there were some mediation tools. She cited the example of an association of notaries in France which provided mediation services.

Baroness Massey asked how many countries have family courts or mediation services and how many "ordinary" parents had access to that information?

Ms Fataliyeva wondered whether the definition of parental responsibility was widening or narrowing. Which country was most successful in establishing legislation on parental responsibility?

Ms Hirsch agreed on the necessity to extend the Council of Europe and The Hague Conference instruments, to solve family disputes with non-European countries, in particular in North Africa. There were national differences, not all States had family courts. Regarding mediation, a number of countries, for example in the UK, Germany and the Netherlands, offered mediation services. The Hague Conference tried to create central contact points for family mediation accessible to "ordinary" parents. States should provide for this possibility. The definition of parental responsibility was widening, thus changing perception: from a custody and access rights perspective to a shared responsibility through the whole life of the child. There was no perfect legislation on parental responsibility: in some countries, such as in France, alternate residence of the child had become the rule, while others privileged the autonomy of the parties.

As a final remark, **Ms Mergen** expressed a concern about the voice of children being effectively heard by the judges.

Ms Bonet thanked the members and the expert and closed the exchange of views.

List of decisions

The Committee on Social Affairs, Health and Sustainable Development, meeting in Strasbourg on 25 April 2017, with Ms Silvia Eloïsa Bonet (Andorra, SOC), first Vice-Chairperson, in the Chair, as regards:

- **Parental authority conflicts** (*Rapporteur: Ms Martine Mergen, Luxembourg, EPP/CD*): held an exchange of views with Ms Juliane Hirsch, Consultant on Private International Law and International Family Law.

Committee on Social Affairs, Health and Sustainable Development
Commission des questions sociales, de la santé et du développement durable

Participation list / Liste de participation

EXCHANGE OF VIEWS AND HEARING – 25 April 2017

ECHANGE DE VUES ET AUDITION – 25 avril 2017

Chairperson / Présidente :

Ms Stella KYRIAKIDES		Cyprus / Chypre
----------------------	--	-----------------

Vice-Chairpersons / Vice-Présidents :

Ms Sílvia Eloísa BONET		Andorra / Andorre
Mr Ertuğrul KÜRKCÜ		Turkey / Turquie
Mr Ionuț-Marian STROE		Romania / Roumanie

Members / Membres

1. Ms Silva CAKA Albania / Albanie
2. Ms Sílvia Eloísa BONET 1st
**Vice Chairperson / 1^{ère}
vice-présidente** Andorra / Andorre
3. M. Mikayel MELKUMYAN Armenia / Arménie
4. Mr Franz Leonhard ESSL Austria / Autriche
5. Mr Stefan SCHENNACH Austria / Autriche
6. Mrs Sevinj FATALIYEVA Azerbaijan / Azerbaïdjan
7. Ms Ganira PASHAYEVA Azerbaijan / Azerbaïdjan
8. M. Damien THIÉRY Belgium / Belgique
9. Mr Stefaan VERCAMER Belgium / Belgique
10. Mme Milica MARKOVIĆ Bosnia and Herzegovina /
Bosnie-Herzégovine
11. Mr Borislav BORISOV Bulgaria / Bulgarie
12. Mr Desislav CHUKOLOV Bulgaria / Bulgarie
13. Ms Marijana BALIĆ Croatia / Croatie
14. Ms Stella KYRIAKIDES Cyprus / Chypre
15. Ms Zdeňka HAMOUSOVÁ Czech Republic /
République tchèque
16. Ms Gabriela PECKOVÁ Czech Republic /
République tchèque
17. Ms Aaja Chemnitz LARSEN Denmark / Danemark
18. Mr Jaak MADISON Estonia / Estonie

Alternates / Remplaçant(e)s

- ZZ...
- Ms Judith PALLARÉS
- Ms Naira KARAPETYAN
- Ms Angelika WINZIG
- Mr Andreas SCHIEDER
- Mr Vusal HUSEYNOV
- M. Muslum MAMMADOV
- ZZ...
- Ms Petra De SUTTER
- ZZ...
- Mr Antoni TRENČEV
- Ms Krasimira KOVACHKA
- Mr Mihael ZMAJLOVIĆ
- Ms Christiana EROTOKRITOU
- Mr Pavel HOLÍK
- Mr Rom KOSTŘICA
- Ms Christina EGELUND
- Ms Marianne MIKKO

19. Ms Anne KALMARI	Finland / <i>Finlande</i>	Ms Anne LOUHELAINEN
20. M. Damien ABAD	France	Mme Catherine QUÉRÉ
21. Mme Maryvonne BLONDIN	France	M. Gérard BAPT
22. Mme Marie-Christine DALLOZ	France	Mme Danielle AUROI
23. M. Denis JACQUAT	France	Mme Marie-Francoise PEROL-DUMONT
24. Ms. Irina PRUIDZE	Georgia / <i>Géorgie</i>	Mr. Dimitri TSKITISHVILI
25. Ms Doris BARNETT	Germany / <i>Allemagne</i>	Ms Elvira DROBINSKI-WEISS
26. Ms Sybille BENNING	Germany / <i>Allemagne</i>	Mr Tobias ZECH
27. Ms Herlind GUNDELACH	Germany / <i>Allemagne</i>	Mr Axel FISCHER
28. Mr Andrej HUNKO	Germany / <i>Allemagne</i>	Ms Annalena BAERBOCK
29. Ms Nina KASIMATI	Greece / <i>Grèce</i>	Mr Dimitrios KAMMENOS
30. Mr Evangelos MEIMARAKIS	Greece / <i>Grèce</i>	M. Konstantinos TZAVARAS
31. Mr Márton GYÖNGYÖSI	Hungary / <i>Hongrie</i>	Ms Mónika BARTOS
32. Mr Ákos HADHÁZY	Hungary / <i>Hongrie</i>	Mr Gábor HARANGOZÓ
33. Mr Vilhjálmur ÁRNASON	Iceland / <i>Islande</i>	Mr Birgir ÁRMANNSSON
34. Mr Joseph O'REILLY	Ireland / <i>Irlande</i>	Mr Rónán MULLEN
35. Ms Maria Teresa BERTUZZI	Italy / <i>Italie</i>	Ms Eleonora CIMBRO
36. Ms Nunzia CATALFO	Italy / <i>Italie</i>	Ms Cristina DE PIETRO
37. Mr Giuseppe GALATI	Italy / <i>Italie</i>	Mr Francesco Maria AMORUSO
38. Ms Laura PUPPATO	Italy / <i>Italie</i>	Ms Adele GAMBARO
39. M. Andris BĒRZINŠ	Latvia / <i>Lettonie</i>	Ms Inese LAIZĀNE
40. ZZ...	Liechtenstein	ZZ...
41. Mr Virgilijus PODERYS	Lithuania / <i>Lituanie</i>	Mr Kęstutis MASIULIS
42. Mme Martine MERGEN	Luxembourg	Mme Françoise HETTO-GAASCH
43. Mr Deo DEBATTISTA	Malta / <i>Malte</i>	Mr Charlò BONNICI
44. Ms Liliana PALIHOVICI	Republic of Moldova / <i>République de Moldova</i>	Mr Valeriu GHILETCHI
45. M. Jean-Charles ALLAVENA	Monaco	M. Eric ELENA
46. ZZ...	Montenegro / <i>Monténégro</i>	ZZ...
47. Mr Paul SCHNABEL	Netherlands / <i>Pays-Bas</i>	Ms Reina de BRUIJN-WEZEMAN
48. Mr Henk OVERBEEK	Netherlands / <i>Pays-Bas</i>	Ms Marjolein FABER-VAN DE KLASHORST
49. Ms Ingebjørg GODSKESEN	Norway / <i>Norvège</i>	Mr Tore HAGEBAKKEN
50. Ms Margareta BUDNER	Poland / <i>Pologne</i>	Ms Magdalena KOCHAN
51. Ms Barbara CHROBAK	Poland / <i>Pologne</i>	Ms Andželika MOŹDŻANOWSKA
52. Mr Andrzej WOJTYŁA	Poland / <i>Pologne</i>	Ms Agnieszka POMASKA
53. M. Luís LEITE RAMOS	Portugal	ZZ...
54. Mme Helena ROSETA	Portugal	Mme Edite ESTRELA
55. Mr Liviu Ioan Adrian PLEȘOIANA	Romania / <i>Roumanie</i>	Mr Corneliu ȘTEFAN
56. Mr Cezar Florin PREDA	Romania / <i>Roumanie</i>	Mr Viorel Riceard BADEA
57. Mr Ionuț-Marian STROE 3rd Vice Chairperson / 3 ^{ème} vice-président	Romania / <i>Roumanie</i>	Ms Oana-Mioara BÎZGAN-GAYRAL
58. Mr Roger ZAVOLI	San Marino / <i>Saint-Marin</i>	Ms Vanessa D'AMBROSIO
59. Mr Milovan BOJIĆ	Serbia / <i>Serbie</i>	Mr Miljan DAMJANOVIĆ
60. Ms Elvira KOVÁCS	Serbia / <i>Serbie</i>	Ms Dubravka FILIPOVSKI
61. Mr Ján MAROSZ	Slovak Republic / <i>République Slovaque</i>	Ms Renáta KAŠČÁKOVÁ
62. Mr Jan ŠKOBERNE	Slovenia / <i>Slovénie</i>	Mr Andrej ŠIRCELJ
63. Mr José Manuel BARREIRO	Spain / <i>Espagne</i>	M. Ovidio SÁNCHEZ
64. Ms Maria Concepción de SANTA ANA	Spain / <i>Espagne</i>	Ms Pilar LUCIO
65. Ms Melisa RODRÍGUEZ HERNÁNDEZ	Spain / <i>Espagne</i>	Ms Ángela BALLESTER
66. Ms Carina OHLSSON	Sweden / <i>Suède</i>	Ms Eva-Lena JANSSON

67. Mr Markus WIECHEL	Sweden / <i>Suède</i>	Ms Annicka ENGBLOM
68. M. Jean-Pierre GRIN	Switzerland / <i>Suisse</i>	Mr Hannes GERMANN
69. Mme Liliane MAURY PASQUIER	Switzerland / <i>Suisse</i>	M. Filippo LOMBARDI
70. Mr Vladimir GJORCHEV	“The former Yugoslav Republic of Macedonia” / “L’ex-République yougoslave de Macédoine”	ZZ...
71. Mr Mehmet BABAOĞLU	Turkey / <i>Turquie</i>	Mr Cemalettin Kani TORUN
72. Ms Emine Nur GÜNAY	Turkey / <i>Turquie</i>	Mr Suat ÖNAL
73. Mr İlhan KESİCİ	Turkey / <i>Turquie</i>	Mr Haluk KOÇ
74. Mr Ertuğrul KÜRKÇÜ 2 nd Vice Chairperson / 2 ^{ème} vice-président	Turkey / <i>Turquie</i>	Ms Filiz KERESTECİOĞLU DEMİR
75. Mr Oleksandr BILOVOL	Ukraine	Mr Vladyslav GOLUB
76. Mr Serhii KIRAL	Ukraine	Mr Boryslav BEREZA
77. Mr Viktor VOVK	Ukraine	Mr Oleksii GONCHARENKO
78. Mr Geraint DAVIES	United Kingdom / <i>Royaume-Uni</i>	Lord George FOULKES
79. Sir Jeffrey DONALDSON	United Kingdom / <i>Royaume-Uni</i>	Baroness Margaret EATON
80. Mr John PRESCOTT	United Kingdom / <i>Royaume-Uni</i>	Baroness Doreen MASSEY
81. Mr Mike WOOD	United Kingdom / <i>Royaume-Uni</i>	Ms Kelly TOLHURST

OBSERVERS / OBSERVATEURS

MEXICO / MEXIQUE

Senator Diva HADAMIRA GASTELUM BAJO / Mme la Sénatrice Diva HADAMIRA GASTELUM BAJO

PARTNERS FOR DEMOCRACY / PARTENAIRES POUR LA DEMOCRATIE

PALESTINIAN AUTHORITY / L'AUTORITE PALESTINENNE

Mr / M. Mohammedfaisal ABUSHAHLA

Mr / M. Azzam AL-AHMAD

Ms / Mme Sahar ALQAWASMI

Mr / M. Qais KHADER

Mr / M. Bernard SABELLA

EMBASSIES / PERMANENT REPRESENTATIONS AND DELEGATIONS
AMBASSADES / REPRESENTATIONS ET DELEGATIONS PERMANENTES

Mr / M. Asmund ERIKSEN..... Norway / Norvège
Mr / M. Augustin MICHAUD..... Switzerland / Suisse
Mr / M. Yngve OLSEN HVOSLEF Norway / Norvège
Ms / Mme Inginur RUSTEM Romania / Roumanie
Ms / Mme Livia RUSU Romania / Roumanie

SECRETARIAT OF DELEGATION OR OF POLITICAL GROUP /
SECRETARIAT DE DELEGATION OU DE GROUPE POLITIQUE

Ms / Mme Gunilla CARLANDER Finland / Finlande
Ms / Mme Gabriella MARANGOU-d'AVERNAS..... Cyprus / Chypre
Mr / M. Joseph MOUSTAKI Israel / Israël
Mr / M. Razvan TANASE Romania / Roumanie
Ms / Mme Sybille ZAKTREGER (Assistant / Assistante) Israel / Israël

ALSO PRESENT / EGALEMENT PRESENTS

EXPERTS

Ms / Mme Juliane HIRSCH, Consultant on Private International Law and International Family Law /
Consultante en Droit International et Droit International de la Famille

Mr / M. Khaled QUZMAR, General Director, "Defense for Children International - Palestine (DCIP)" /
Directeur Général, « Défense des Enfants International – Palestine (DEIP) »

Ms / Mme Sarit MICHAELI, International Advocacy Officer, "B'Tselem, The Israeli Information Center for
Human Rights in the Occupied Territories" / Agent international de liaison / « B'Tselem-Centre d'information
israélien pour les droits de l'homme dans les territoires occupés »

NGO's / ONG

Mr / M. Andreas BERGLÖF, European Advocacy and Mobilization Lead, IPPF European Network / Défense
européenne et direction de mobilisation, IPPF European Network

Ms / Mme Senellart DE VRIERE, Federation of Catholic Family Associations in Europe (FAFCE) / Fédération
des Associations Familiales Catholiques en Europe (FAFCE)

Mr / M. Thierry MATHIEU, Vice-Chairperson of the Committee on Democracy, Social Cohesion and Global
Challenges / Vice-Président de la Commission Démocratie, Cohésion sociale et Enjeux Mondiaux

Ms / Mme Lilit POGHOSYAN, European Advocacy and Mobilization Lead, IPPF European Network /
Défense européenne et direction de mobilisation, IPPF European Network

Mr / M. Nicola SPERANZA, Policy Officer, Federation of Catholic Family, Associations in Europe (FAFCE) / Responsable des politiques, Fédération des Associations Familiales Catholiques en Europe (FAFCE)

Mr / M. Philippe TOUSSAINT, Policy Officer, Federation of Catholic Family, Associations in Europe (FAFCE) / Responsable des politiques, Fédération des Associations Familiales Catholiques en Europe (FAFCE)

Mr / M. Leo van DOESBURG, The European Christian Political Movement (EPCM) / Mouvement politique chrétien européen (MPCE)

Ms / Mme Anje WIERSINGA, IAW Representative at the Council of Europe / Représentante de l'Alliance Internationale des Femmes

OTHERS / AUTRES

Mr / M. Kewin KLOTZEK, Ms MOŽDŽANOWSKA's assistant / Assistant de Mme MOŽDŽANOWSKA

COUNCIL OF EUROPE STAFF / SECRETARIAT DU CONSEIL DE L'EUROPE

NAME / NOM

DEPARTMENT / SERVICE

Ms / Mme Katrin UERPMANN, DGI Directorate General Human Rights and Rule of Law / DGI Direction Générale des Droits de l'Homme et de l'Etat de Droit

Ms / Mme Kristiina FELT, DGI Directorate General Human Rights and Rule of Law / DGI Direction Générale des Droits de l'Homme et de l'Etat de Droit

PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE

Committee on Social Affairs, Health and Sustainable Development / Commission des questions sociales, de la santé et du développement durable

NAME / NOM

Ms / Mme Tanja KLEINSORGE Head of the Secretariat / Cheffe du Secrétariat
Ms / Mme Aiste RAMANAUSKAITE Secretary to the Committee / Secrétaire de la commission
Ms / Mme Maren LAMBRECHT-FEIGL Secretary to the Committee / Secrétaire de la commission
Ms / Mme Alina BELIAEVA Co-Secretary to the Committee / Co-Secrétaire de la commission
Ms / Mme Jannick DEVAUX Project Manager / Chef de projet
Ms / Mme Prisca BARTHEL Responsible for the Europe Prize section /
..... Responsable pour la section Prix de l'Europe
Ms / Mme Linda McINTOSH Principal Assistant / Assistante principale
Ms / Mme Fatima NOUICER Assistant / Assistante
Mr / M. Vincent LAUMIN Trainee / Stagiaire