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Call for a supplementary “State of the Union address” on monitoring family courts in the EU

(1) To ensure that the democratic rule of law in the European Union (EU) will prevail as the steering normative base for the EU practice of family protection, and that the “State of the Union address 2021” of Ms Ursula von der Leyen delivered on 15 September 2021 will not turn out to be only a mimicry of the democratic and constitutional practice of the United States of America, the **Fundacja Wolne Społeczeństwo (FWS, Free Society Foundation) requests** in the realization of the freedom of information rights, on the legal ground of the Article 42 of the Charter of Fundamental Rights of the European Union, **that the European Commission and Ms Ursula von der Leyen personally, in a supplementary “State of the Union address” publicly present all the relevant responses of the European Commission to the dramatic calls of the European Parliament of 31 January 2018 and of 29 November 2018** concerning the family protection in the EU and Germany, as well as present the European Commission’s official activities aimed at judiciary monitoring and family protection in the cases of the mobile EU families, bi-national couples and cross-border family proceedings which the member of the European Parliament considered for their calls quoted as follows:

(1.1) form the postulates of the Recommendation of the Committee on Petitions of the European Parliament of 31 January 2018:¹

(...) **3.** Calls on Member States to reinforce all safeguard measures (...) focusing on (...) mechanisms to evaluate the performance of the judges; (...)

5. Calls on Member States to avoid discrimination or disadvantaged judicial and administrative procedures against foreign parents (...), and establishing the necessary structures able to provide the concerned EU citizens and residents (...) counselling and legal support to all parts involved in the proceedings (...)

9. (...) highlight the successful practice of the Slovakian Central authority directly negotiating and signing bilateral agreements (...)

11. Calls on Member States to put in place monitoring and evaluation systems (...) within a national coordinating framework on cross-border cases involving children; (...)

15. (...) stresses that proper monitoring of the post-judgment situation is pivotal, including when contact with parents is involved; (...)

¹URL: <https://www.europarl.europa.eu/cmsdata/137380/1141947EN.pdf>.

17. Reminds the huge amount of petitions received on the German Jugendamt system filed by foreign parents complaining that they are systematically discriminated (...)

22. Calls on Member States to consider offering free of charge and accessible legal assistance, in adoption, custody or guardianship national and/or cross-border cases, to families with low or no income and to those facing risk of poverty or being below poverty line; (...)

33. Is deeply convinced that the EU should monitor and check more closely procedures and concrete practices on family law matters with cross-border implication adopted by the Member States competent authorities having an impact on decisions concerning parental responsibility, visiting rights and maintenance obligations (...)

34. Calls on Member States to provide a list of support structures to foreign parents who find themselves in a situation of potential removal of parental rights; (...)

37. Recommends the establishment of family support centres in Member States offering comprehensive advice by international and interdisciplinary teams of lawyers, social workers, mediators and psychologists for mobile EU families requiring assistance in their cooperation with social services; calls on the Commission to fund NGO's offering practical support to mobile families making use of their rights deriving from Union citizenship; (...)

(1.2) and from the postulates of the European Parliament resolution of 29 November 2018 on the role of the German Youth Welfare Office (Jugendamt) in cross-border family disputes (2018/2856(RSP)):²

(...) **1.** Notes with great concern that problems concerning the German family law system, including the controversial role of the Jugendamt, denounced through petitions by non-German parents, still remain unsolved; underlines that the Committee on Petitions continuously receives petitions by non-German parents in which serious discrimination is reported as a result of the procedures and practices concretely adopted by the competent German authorities in cross-border family disputes involving children; (...)

4. Stresses the obligation, as provided for in the Brussels IIa Regulation, for national authorities to recognize and enforce judgments delivered in another Member State in child-related cases; is concerned about the fact that in family disputes having cross-border implications, the German authorities can, allegedly, systematically refuse to recognize judicial decisions taken in other Member States (...)

5. Regrets the fact that for years the Commission has not implemented accurate checks on the procedures and practices used in the German family law system, including the Jugendamt, in the framework of family disputes having cross-border implications, thus failing to effectively protect the best interests of the child and all other related rights;

6. Recalls the Commission's reply with respect to the petitions on the role of the Jugendamt in cross-border family disputes; reiterates that the EU has no general competence to act in matters of family law, that substantive family law remains the sole responsibility of the Member States and cannot be monitored by the Commission, that, in case of concern about the functioning of the Jugendamt, redress must be sought at national level, and that if parents consider that any of their fundamental rights have been violated, they may lodge a complaint with the European Court of Human Rights in Strasbourg, once the domestic remedies have been exhausted; (...)

8. Emphasizes, in accordance with the case law of the CJEU, the autonomous notion of the 'habitual residence' of the child in EU law and the plurality of the criteria to be used by the national jurisdictions to determine the habitual residence;

²URL: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0476_EN.html.

11. Calls on the Commission to assess in the petitions in question whether German jurisdictions have duly respected the provisions of the Brussels IIa Regulation when establishing their competences, and whether they have taken into consideration judgments or decisions issued by jurisdictions of other Member States;

12. Condemns the fact that, in cases of supervised parental access, the failure by non-German parents to comply with the Jugendamt officials' procedure to adopt German as the language during conversations with their children has led to the interruption of conversations and to a ban on contact between the non-German parents and their children; believes that this procedure adopted by the Jugendamt officials constitutes clear discrimination based on origin and language against non-German parents; (...)

16. Reminds Germany of its international obligations under the UN Convention on the Rights of the Child, including Article 8 thereof; believes that major improvements must be made by all German competent authorities to adequately safeguard the right of the children of bi-national couples to preserve their identity, including family relations, as recognized by law without unlawful interference;

17. Considers that in light of Article 81 of the TFEU the Commission can and must play an active role in ensuring fair and consistent non-discriminatory practices towards parents in the treatment of cross-border child custody cases throughout the Union;

18. Calls on the Commission to ensure that accurate checks are carried out on the non-discriminatory nature of procedures and practices used in the German family law system, including by the Jugendamt, in the framework of cross-border family disputes;

19. Reiterates that the principle of subsidiarity applies in matters of substantive family law; (...)

23. Recalls the importance of providing non-German parents without delay, from the outset and at every stage of child-related proceedings, with complete and clear information on the proceedings and on the possible consequences thereof, in a language that the parents in question fully understand (...) calls on the Member States to implement targeted measures aimed at improving legal support, aid, counselling and information for their nationals in cases (...)

24. Stresses that the denounced instances whereby non-German parents are prevented from communicating with their children in their common mother tongue during visits constitute discrimination on the grounds of language, and are also contrary to the aim of fostering multilingualism and diversity of cultural backgrounds within the Union and in breach of the fundamental rights of freedom of thought, conscience and religion; (...)

28. Calls on the Member States to implement targeted measures aimed at improving legal support, aid, counselling and information for their nationals in cross-border family disputes involving children (...)

29. Reiterates its call on the Commission and the Member States to co-finance and promote the establishment of a platform providing assistance to non-national EU citizens in family proceedings; (...)

(2) The FWS demands from the European Commission publication of all the documents of the Commission that contain or refer to any legal opinion concerning the above (§ 1.2.6) quoted statement that: *"substantive family law remains the sole responsibility of the Member States and cannot be monitored by the Commission"*, or concern the legal implications of that statement, especially the lack of legal basis in the European Union law to recognize the validity of the provisions of the Brussels IIa Regulation in regard to the transfer of jurisdiction and for national authorities — to recognize and enforce judgments delivered in another Member State within the transferred jurisdiction and concerning parental responsibility, parental rights or the removal of the parental rights for any other purpose than for interim measures.

(3) The FWS demands from the European Commission a public presentation of the total numerical

sums for each year between the years 2003 – 2021 of the parents from every member state of the European Union that have been deprived of their parental or guardianship rights by a judgment delivered in these years and concerning parental responsibility, parental rights or the removal of the parental rights of a parent being a citizen of another member state than the state of the judgment's origin.

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