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Committee on Women's Rights and Equal Opportunities

2002/0110(COS)

26 June 2002

OPINION

of the Committee on Women's Rights and Equal Opportunities

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance (COM (2002) 0222 – C5-0234/2002 – 2002/0110(COS))

Draftsperson: Anna Karamanou

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Anna Karamanou draftsman at its meeting of 22 May 2002.

It considered the draft opinion at its meetings of 17 and 18 June 2002.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Olga Zrihen Zaari, acting chairperson; Jillian Evans, vice-chairperson; Anna Karamanou, draftsman; María Antonia Avilés Perea, Regina Bastos, Lissy Gröner, Miet Smet, Elena Valenciano Martínez-Orozco, Olle Schmidt (for Lousewies van der Laan).

SHORT JUSTIFICATION

The creation of a harmonised and uniform judicial area in the European Union is based on the mutual recognition of judicial decisions in all Member States. This is a real necessity in the present stage of European unification, as borders between Member States are abolished and the free movement of persons render the European Union a single territory and hence a single judicial area. The same applies not only to matters falling under the EU competence, but also to matters hitherto ruled exclusively within national borders, as is the area of family law.

The mutual recognition of decisions in the area of divorce, separation, marriage annulment and parental responsibility is governed by Council Regulation (EC) No 1347/2000, which entered into force in March 2001; matters relating to maintenance are governed by Regulation (EC) No 44/2001. The Commission proposed initially a further Regulation to govern the mutual recognition and enforcement of court rulings in matters of parental responsibility by abolishing the complicated requirements for such enforcement in another Member State (abolition of the *exequatur*). In addition, there was a proposal to regulate matters of child abduction (French initiative). The Commission decided, therefore, to propose the setting up of a single legal instrument to cover all these fields. The European parliament agreed with this initiative and the present proposal is the result of this decision.

The proposed Regulation aims thus at establishing a balance between ensuring that court decisions always reflect the best interest of the child and allowing decisions in one Member State to benefit from recognition throughout the European Union and should be supported by the Committee on Women's Rights and Equal Opportunities, provided that the weaker economic and social situation of women holders of parental responsibility is duly taken into account.

AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 8(a) (new)

8(a) In cases of divorce, legal separation or marriage annulment, the parental responsibility is most often entrusted to mothers who are, as proved, generally in a weaker economic situation than men, and this important impediment should be taken into account.

Justification

The cases of cross-border recognition of court rulings most frequently entail considerable cost and effort; this should not, however, constitute an impediment for those parents who have not the financial or other means to claim the return of the child. In addition, it is statistically proved that women are in a weaker economic situation than men, more so if they have the responsibility/custody of child or children after a legal separation, marriage annulment or divorce.

Amendment 2 Recital 12 (a) (new)

12 (a) In order to facilitate smooth contacts with the competent authorities, which is in the interest of the child, appropriate support, such as training in legal literacy, should be provided for where necessary to parents, especially those who are less experienced as regards such contacts.

¹ OJ C
PE 315.509

Justification

The return of a child in cases of abduction or wrongful denial of access requires a good knowledge and understanding of the parental responsibility legal rights as well as the rights of the child and an ability to present these rights to the competent authorities. Parents or holders of parental responsibility should not be deprived of their right to act because of lack of experience or literacy in this field.

Amendment 3
Article 12.1 (c)

(c) if the jurisdiction of the courts has been accepted by the spouses and is in the best interests of the child.

(c) if the jurisdiction of the courts has been accepted ***in full cognizance of the implications*** by the spouses and is in the best interests of the child;

Justification

Courts should make clear what are the consequences of the acceptance of their jurisdiction and ensure that the parents/holders or parental responsibility fully understand these implications.

Amendment 4
Article 12.2 (a)

(a) all holders of parental responsibility have accepted jurisdiction at the time the court is seized;

(a) all holders of parental responsibility have accepted jurisdiction at the time the court is seized, ***provided the implications of such acceptance are fully understood by them;***

Justification

Courts should make clear what are the consequences of the acceptance of their jurisdiction and ensure that the parents/holders or parental responsibility fully understand these implications.

Amendment 5
Article 16 (b) a (new)

(c) if failure to take the steps required is due to lack of legal literacy of the applicant.

Justification

If the applicant has not taken the required steps due to his/her lack of understanding the requirements or the procedure or the language, the spouse or the child should not be deprived of his/her rights; the courts should ascertain whether failure to take the subsequent steps is the result of such a lack of understanding and proceed to facilitate the applicant.

Amendment 6
Article 25.2 (a) (new)

(2) a. Central Authorities must provide adequate support and advice to parents hampered by reluctance or moral or financial inability in dealing with official procedures and legal requirements.

Justification

The return of a child in cases of abduction or wrongful denial of access requires a good knowledge and understanding of the parental responsibility legal rights as well as the rights of the child and an ability to present these rights to the competent authorities. Parents or holders of parental responsibility should not be deprived of their right to act because of lack of experience or literacy in this field.