

# COMMISSION OF THE EUROPEAN COMMUNITIES

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CUSTODY OF CHILDREN

(INTERIM REPORT FROM THE COMMISSION TO THE COUNCIL)



INTERIM REPORT  
FROM THE COMMISSION TO THE COUNCIL

Custody of children.

The Commission has the honour to make the following interim report to the Council on the subject of custody of children. On 9 October 1978 the Council decided that the Commission should present this report to the Council within six months.

As required by the Council's decision, this report records the results achieved and the prospects of success of the work undertaken in this field by the Council of Europe and by the Hague Conference on Private International Law. It also deals with the question whether, for the purposes of the European Communities, any additional solution or, indeed, a quite separate solution, is required, (Council document R/3578/78, JUR 188) of 22/12/1978).

In pursuance of the Council's decision the Commission arranged a meeting in Brussels on 17 January 1979 of a committee made up of governmental experts with observers from the Hague Conference and from the Council of Europe. It became clear during the course of that meeting that the work of the Hague Conference had only just begun. The Hague Conference Secretariat had drawn up a report and questionnaire (1) by way of preparatory work for the first meeting of a committee of experts, who met at The Hague from 12 to 22 March 1979. Their intention at present is not simply to produce a new convention but a compound of preventive measures and of measures of mutual assistance, in the administrative and judicial fields, which will ensure that the child is returned to its country of origin. Central authori-

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(1) Replies to the questionnaire were received from 22 of the 28 Member Countries of the Conference.

ties should be set up in each State to provide adequate information services on the one hand, and to prevent kidnapping of children or to remedy it if it happens. It would be reasonable to anticipate that the work of the Hague Conference will produce positive results in 1980, when the Conference holds its 14<sup>th</sup> Session. Proper measures should, however, be taken to ensure that those positive results are not at variance with the convention which is being prepared by the Council of Europe.

The Council of Europe's work aims to create a convention on recognition and enforcement. This work has progressed much further than that of the Hague Conference. It commenced in 1973. Originally its purpose was to prepare a draft convention on recognition and enforcement of judgments awarding custody of children, and to prepare a second draft convention on the creation of an international court for the settlement of conflicts arising in that field. The first draft was expanded in 1976 and now covers the question of restoration of custody i.e. the important matter of unlawful removal from the jurisdiction. After the final meeting of experts from 29 January to 3 February 1979 in Strasbourg, the draft was sent to the Governments for their comments. These should be presented by the end of May and will be examined by the Council of Europe's Legal Co-operation Steering Committee in July 1979.

The governmental experts who met on 17 January 1979, at the request of the Commission, discussed a proposal which had been made by the Belgian delegation whereby the Council of Europe's texts might be improved and simplified. The draft convention prepared by the Council of Europe was made up in such a way that some parts of the text were capable of standing by themselves. Thus a State would be able to accede to the provisions dealing with custody but need not accede to those dealing with restoration of custody, or vice versa. A State could, of course, subscribe to the provisions on both of those matters.

The Belgian proposal sought to convert the Council of Europe's texts into a composite whole. It sought also to reduce the number of grounds of refusal (which were considered too numerous) and to prevent the court in the State addressed from modifying the judgment for restoration of custody where an application for restoration was made during the period of six months following the unlawful removal of the child. This proposal was usefully examined on 17 January 1979 in Brussels by experts from the Nine, was discussed in Strasbourg from 29 January to 3 February and was there adopted subject to certain amendments which would inter alia make available to the Contracting States a number of additional grounds on which recognition could be refused, even where restoration were applied for during the six month period. It would be desirable that the governments of the Nine adopt a common point of view as regards the Council of Europe's drafts which they have received for comment - a common point of view especially as regards the reservations to be made - so that the nine Member States which form the European Communities are bound reciprocally in this particularly delicate matter.

The Council asked the Commission to examine the question whether, for the purposes of the EC, any additional solution or, indeed, quite separate solution, is required.

The Commission would like to contribute to a successful outcome of the work now being done by the two organisations aforesaid by collaborating with them and by avoiding any duplication of work. Experience has shown, however, that in various branches of civil law a subject may quite successfully be regulated at international level by means of complementary conventions. Thus the Council of Europe's draft provides that the Contracting states will use a simple and speedy form of procedure for purposes of recognition and enforcement of judgments (in particular, an application for recognition and enforcement should be capable of being dealt with upon simple demand). Indeed, if it is desirable that the Nine should establish a similar form of procedure amongst themselves, in order to supplement the prospective Strasbourg convention, they could adopt the procedure provided for in the Brussels Convention of 27 September 1968, or use that procedure

as the basis for a suitable one. This answer to the problem cannot, of course, be envisaged until the texts now being drafted in the Council of Europe have been signed. It must be pointed out, however, that certain delegations were very hesitant about the Community's getting involved in the matter of custody of children. They took the view that the Community has no authority under the Treaties to do so.

It is too early at the moment to express any opinion about the two points raised by the Council i.e. the prospects of success of the work being done by the two said organisations, and whether additional measures, or, possibly, quite separate measures, are required at Community level. It will, however, be possible to form a fairly exact view after July next about the results of the Council of Europe's work and about the effects it will have as regards the EC.

This report should be regarded as an interim report. The Commission will report afresh to the Council as soon as there has been any more specific movement in the matter.

It should be recorded that at the meeting of experts which was arranged by the Commission, the French delegation expressed the opinion that a central authority should forthwith be set up in each Member State whose role would be to facilitate the restoration of children unlawfully removed from one State to another.

The French delegation also expressed its Government's intention to make a proposal in the near future that the competence of the said central authority should be widened so as to cover other branches of civil law. In this way mutual assistance between the Nine could be developed, particularly for the purpose of facilitating the application of the Brussels Convention of 27 September 1968 as regards service of judicial and extrajudicial documents, or notification thereof.

The Commission cannot but approve this constructive proposal.

In conclusion:

1. There is some justification for thinking that the work which has recently been started by the Hague Conference on Private International Law will result in the adoption of preventive measures and of measures of mutual assistance, in the administrative and judicial fields, which will be effective to ensure that the child is returned to his country of origin.
2. The Member States of the Community should adopt a common point of view concerning the draft conventions of the Council of Europe, which have been submitted to governments for their views, so that the Nine undertake reciprocal obligations on the subject of custody and restoration of custody.
3. After the Council of Europe's conventions have been signed, it might be desirable for the Nine to concert their views for the purpose of agreeing any supplementary action. It might, for example, be desirable to adopt in relation to recognition and enforcement of decisions a simple and speedy form of procedure such as that provided for in the Brussels Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters.

