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**Recommendation CM/Rec(2015)4
of the Committee of Ministers to member States
on preventing and resolving disputes on child relocation**

*(Adopted by the Committee of Ministers on 11 February 2015
at the 1219th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its member States, in particular by promoting the adoption of common rules in legal matters;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms, of

4 November 1950 (ETS No. 5) and the relevant case law of the European Court of Human Rights, in particular in relation to Article 8 (right to respect for private and family life);

Taking into account the United Nations Convention on the Rights of the Child, of 20 November 1989, and recognising that the best interests of the child are a primary consideration in all matters concerning children in accordance with Article 3 of this convention, and that the right of the child to maintain contact with both parents shall be respected in accordance with Article 9 of this convention;

Recalling the European Convention on the Exercise of Children's Rights, of 25 January 1996 (ETS No. 160), and in particular its provisions relating to the procedural rights of a child and the role of the judicial authorities, and the Convention on Contact concerning Children, of 15 May 2003 (ETS No. 192);

Recalling the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, adopted by the Hague Conference on Private International Law, on 19 October 1996;

Recalling its Recommendation Rec(84)4 to member States on parental responsibilities and, in particular, Principle 6 which provides for the allocation of parental responsibilities in the case of dissolution of the parents' marriage or separation;

Recalling its Recommendation Rec(98)1 to member States on family mediation;

Taking note of the Washington Declaration on International Family Relocation, of 25 March 2010;

Recalling its Guidelines on child-friendly justice of 17 November 2010, and in particular its provisions relating to the right of the child to be heard and to express his or her views;

Wishing to provide guidance to member States on situations concerning child relocation;

Wishing to encourage the prevention and resolution of disputes on child relocation as a means of reducing the incidence of child abduction,

Recommends that member States take or reinforce all measures they consider necessary with a view to implementing the principles contained in the appendix to this recommendation.

Appendix to Recommendation CM/Rec(2015)4

PRINCIPLES

Definitions

For the purposes of this recommendation and its principles:

- a. "child" means every human being below the age of 18 unless majority is attained earlier under the national law applicable to the child;
- b. "child relocation" refers to a change in the child's habitual residence;
- c. "competent authority" refers to a judicial or administrative body that is competent to make a legally binding decision affecting the child's habitual residence;
- d. "contact" refers to stays of limited duration, meetings, communication in any form and the provision of information;
- e. "parents" refers to the persons who are considered to be the parents of the child according to national law;
- f. "other holders of parental responsibilities" refers to persons who enjoy parental responsibilities in addition to or instead of the parents;
- g. "parental responsibilities" refers 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.

Scope

This recommendation applies to situations where there is, or may be, a disagreement on the relocation of a child, either within the jurisdiction of the member State (subject to principle 7) or abroad.

This recommendation applies in particular to situations where, as a result of his or her relocation, a child would be at risk of losing contact, or of a significant disruption to contact, with his or her parents or with other holders of parental responsibilities.

General principles

1. National law on child relocation should:
 - a. offer sufficient legal certainty to prevent and resolve disputes;
 - b. provide sufficient flexibility to satisfactorily resolve individual disputes;
 - c. encourage the reaching of friendly agreements.

Rights of the child

2. The best interests of the child shall be a primary consideration in securing agreements and resolving disputes in matters of child relocation.
3. The child should have the right to be informed and consulted, and to express his or her views on the proposed relocation. Due weight should be given to the child's views in accordance with his or her age and degree of maturity.

Avoiding disputes

4. Measures aimed at avoiding disputes on child relocation or its consequences should be in place. Such measures might include:

- provisions that encourage parents or other holders of parental responsibilities to reflect on a possible future relocation of the child by agreeing on relocation issues such as prior notice, duration and geographical limits;
- rules on notification to the effect that the person proposing to change the child's habitual residence should be required to inform the other parent or other holders of parental responsibilities in writing prior to the proposed relocation and within specific time limits, in order to avoid unilateral relocations;
- services (public or private) for advice, counselling and mediation to assist parents or other holders of parental responsibilities in reaching an agreement.

Dispute resolution

5. Alternative means of dispute resolution should be promoted in order to reach agreements on child relocation without the need to have recourse to the competent authority, without prejudice to principle 6.
6. Parents or other holders of parental responsibilities should have the right to bring any unresolved dispute on child relocation to a competent authority for decision.
7. In the absence of agreement, the child's habitual residence should not be changed without a decision of the competent authority, except in circumstances provided for by national law.
8. In resolving disputes on child relocation, the competent authority should ensure that all relevant factors are taken into consideration, giving such weight to each factor as is appropriate in the circumstances of the individual case. The examination shall focus on the best interests of the child.
9. The decision of the competent authority should be made without any presumption for or against changing the child's habitual residence.
10. As time is of the essence in disputes over child relocation, particularly as far as the child is concerned, member States should ensure that disputes are resolved by the competent authority as quickly as possible.
11. Consideration should be given to facilitating direct judicial communications between the authorities of member States on international child relocation cases.

Related documents

CM/Del/Dec(2015)1219/10.1

European Committee on Legal Co-operation (CDCJ) - a. Abridged report of the 89th meeting (Strasbourg, 29-31 October 2014) - b. Draft Recommendation CM/Rec(2015)... of the Committee of Ministers to member States on preventing and resolving disputes on child relocation and its Explanatory Memorandum - c. Study on the feasibility of a Council of Europe legal instrument on the legal regulation of lobbying activities

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European Committee on Legal Co-operation (CDCJ) - b. Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation - Explanatory Memorandum [1219 meeting]

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1219th meeting of the Ministers' Deputies - Meetings and eve... 11/02/2015

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