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Letter from Mrs Banotti, Mediator in family affairs
Member of European Parliament to the German Government

Mr Horst Heitland
Bundesministerium der Justiz
Mohrenstrasse 37
10117 Berlin
Germany

Brussels, 10 November 2003

Dear Mr Heitland,

I was delighted to meet you at the Lecco conference on family law in the European Union in October. Following our conversation, I am now writing to you in my capacity as The European Parliament President's Mediator on Transnationally Abducted Children, with regard to a number of cases which are causing serious hardship and heartache for those involved. I believe you are already familiar with the dossiers I am outlining here.

While there have been considerable improvements in Hague returns of children abducted to Germany in recent months, there are still some long-standing, well documented cases, where foreign parents are not being granted visiting rights and even where visiting rights are recognised they are unable to exercise them. This causes considerable distress and frustration, and forces parents to seek alternative means of redress. It is clear that there is a complete breakdown of confidence in the Jugendamt structure and in the family court system in Germany as far as these foreign parents are concerned. As Member States of the European Union we have all, including Germany, signed up to new European Legislation in this field which is due to enter into force in 2005 and yet no progress seems to be occurring on the ground in existing cases.

I also wish to express serious concern regarding a recent trend on the part of German mothers who following a divorce from a foreign national and having successfully obstructed visiting and access to the children, are now seeking to change children's surnames and succeeding without the authorisation of the other parent. Several examples of this are mentioned below and I am enclosing relevant documentation.

Could you please brief me on the legislation which seems to permit a parent to change a child's name without informing or obtaining the consent of the other parent, or without any action on the part of the authorities to seek the other parent's consent? Frequently the child's name is that of the non-custodial parent.

CASE I Belgium/Germany (**Gallez / Kamran**)

1 child: Antoine Gallez (born 4 May 1991) Divorce: 15 September 1998

Ms Kamran initially left Belgium without Antoine to return to Germany. She subsequently returned to Belgium from where she abducted Antoine back to Germany. The divorce proceedings took place in Germany, custody was granted to the mother and no decision was made concerning visiting rights at the time of the divorce. The apparent grounds for not discussing visiting rights were that Antoine did not want contact with his father, I note that Antoine was seven years old at the time of the divorce. Despite this, to show good faith Mr Gallez did pay child maintenance for his son until he had no address through which to make such payments. Ms Kamran has also taken the ultimate step of seeking to change Antoine's family name from his given name of Gallez to his mother's name. She has done this without the consent of Mr Gallez. At no stage has Mr Gallez been consulted about this matter, despite the fact that the authorities have full contact details for Mr Gallez, as his address has remained the same since the divorce (84 Rue A Smekens, 1030 Brussels, Belgium). Those details are on the divorce papers and on the cheques sent to cover the child maintenance. I am enclosing a copy of the details of the divorce proceedings and the correspondence concerning the name change. I would be grateful for positive action regarding the re-establishment of contact between father and son given that six years have now passed since Antoine was abducted to Germany. Furthermore what action is being taken concerning the changing of children's surnames without parental consent from both sides given that the decision was reached on the sole statement of the abducting parent, in this case, the mother? I emphasize that Mr Gallez's whereabouts have been known to the administration and local authority in Frankfurt throughout these prolonged proceedings.

CASE II (UK/Germany) **Mr Guy Foster/Mrs Britta Foster (divorced Geilenkirchen 2000)**

1 child: Colin Foster born 10 August 1989

This is a case of access rights for Mr Foster. Following the divorce Mrs Foster was granted right of abode and chose to live in to Germany. Mr Foster currently lives in the UK. However as part of the divorce settlement Mr Foster was granted full access to his son. At present Mr Foster does not know where his son is living but believes him to be living with his maternal grandparents as his mother had some psychiatric problems. Apparently some meeting took place in the Family court in Heinsberg concerning the welfare of Colin on December 19th 2000 to which Mr Foster was invited. However the invitation was sent after the meeting took place as the letter was dated 3rd January 2001. Mr Foster is not seeking full custody of Colin, he just wishes to be able to remain in contact with his son and invite him for holidays and get to know his English family as well. There is also a question concerning the fact that Mrs Foster has actually transferred guardianship of Colin to his maternal grandparents when he has a father in the UK who is capable of looking after him. Mr Foster has had no contact with Colin since 1997. Mr Foster can be contacted at C/O Susan Brannigan, 4 Onley Park, Rugby, Warwickshire, CV23 RAN, UK.

CASE III **Feargal O Béarra (Irish)/ Ute-Corinna Felski (German) (unmarried)**

1 Child: Tadhg Piaras O Béarra born 27 August 2001

In this case both parents were resident in Germany until recently. The relationship between the parents was over before the birth of their son, however Mr O Béarra acknowledged paternity of Tadhg Piaras and had regular contact 2/3 days per week including overnight stays. However with the passage of time this access had become more and more difficult coming to a complete stop in January 2003. Mr O Béarra has now been informed that Ms Felski has requested that Tadhg Piaras' surname be changed to Felski, her surname from a previous marriage. She has requested this on the grounds that O Béarra is difficult to pronounce. Mr O Béarra is opposed to such a change. In July 2003 I wrote to Mr Merkens in the

"Einwohner und Standesamt" in Bonn expressing Mr O Béarra's concerns and to date have not even received an acknowledgement. Mr O Béarra has since left Germany (August 2003) to take up a teaching post in University College Galway. For the moment he has succeeded through direct negotiation with Ms Felski in seeing his son again recently and would hope to be able to put this on a regular footing. He is determined to maintain regular contact with Tadhg. As he is opposed to the name change, it would be helpful if you could provide the necessary assistance in order to prevent this from taking place. Mr O Béarra can be contacted at The Dept of Old and Middle Irish, Scoil na Gaeilge, University College Galway, Ireland. (tel 00 353 91 524411 ext 2550)

CASE IV (UK/Germany) Dr Douglas Grindlay Alexandra Claudia Gronski

1 Child : Philip Grindlay born 30 January 1997

Divorce May 2002 in UK recognised by family court in Hamburg August 2002.

In this case joint custody was granted with Philip living with his mother and full access rights for his father.

Ms Gronski had left the United Kingdom without the consent of Mr Grindlay in 1997 with Philip when he was six months old, he did not take a Hague case at that time but filed for divorce. Following the divorce Dr Grindlay got joint custody of Philip with Ms Gronski, he has agreed to the child's residency in Germany with his mother. While Dr Grindlay had financial means he paid maintenance for Philip (1997-98) to the Hamburg Jugendamt. It was when the Jugendamt in Pinneberg sought maintenance payments that Dr Grindlay realised Ms Gronski had moved. At a court hearing in Pinneberg at the end of 2002 Ms Gronski sought to get sole custody on the grounds there had been no contact from the father, although he had made fruitless attempts to make contact since 1997 and the Pinneberg Jugendamt knew where to find him when seeking maintenance. (Dr Grindlay is completing a post graduate course following a period of illness but once he has completed his studies and has obtained work, he intends paying maintenance for Philip again.) I was heartened at the decision of the Pinneberg Court to uphold the joint custody arrangement and to order that Dr Grindlay be given access to his son. Dr Grindlay met Philip after this hearing and has not been able to get access since. Ms Gronski has now apparently moved again, this time to Flensburg, Dr Grindlay has now been told to go back to the district court in Flensburg to get access to Philip as the Pinneberg order does not apply. These delaying tactics are both obstructive and costly. Surely a court order made in one court in Germany should be recognised throughout the country? Furthermore Ms Gronski is now taking steps through the courts in Flensburg to have Philip's surname changed to Gronski. Dr Grindlay will be in Court again in Flensburg on 21 November to seek a new access order, no doubt further obstacles will be put in his way. He is also opposing the change in Philip's surname. As in Pinneberg, the Jugendamt in Flensburg has made no attempt to contact Dr Grindlay either concerning access or the name change. Dr Grindlay can be contacted at 23 Charnwood avenue, Sutton Bonington, Loughborough, LE12 5NA UK. Tel 00 44 1509 67 22 34.

CASE V (South Africa/Germany) Michael Hickman (South Africa) Nicola Hickman (Germany)

**2 Children: John Michael Hickman born 3 December 1989
Sebastian Richard Hickman born 18 October 1993**

Mrs Hickman abducted the children from South Africa to Germany on 29th November 1995. At this stage there was not yet a divorce. A Court in Wilhelmshaven, northern Germany, granted interim custody to the mother in 1996 as father was in South Africa while informing him of proceedings by ordinary mail. A letter can take between six and eight weeks to South Africa. The decision on custody was confirmed in the absence of Mr Hickman who sought to reverse the decision as soon as he received the information, but by then his deadline for appeal had expired. Since then he has been struggling to

gain access to his sons. The last meaningful contact between Mr Hickman and his two boys took place in April 2000 when Mr Hickman's mother travelled from South Africa and stayed with the boys in their own home, while Mr Hickman visited them each day. These meetings were successful. The meetings were organised without the intervention of the Jugendamt. However nothing has happened since and Mr Hickman is still seeking assistance from the authorities in order to re-establish good contact with his sons. Mr Hickman has made it abundantly clear to me that his main grievance is with the lack of goodwill on the part of the Jugendamt in Wilhelmshaven to work with both parents towards a positive solution, thus providing the children with the opportunity to know and love both their parents. At no stage did Mr Hickman intend removing the children from their mother, even though they had been abducted. At present Mr Hickman appears to be being put under severe pressure to abandon his attempts to see his children, it is surely the role of the authorities to assist Mr Hickman in his efforts to see his sons on a regular basis? Mr Hickman is currently resident at Albrecht strasse 100, 26388 Wilhelmshaven. It is now eight years since the abduction and three years since Mr Hickman has seen his children, although they are currently living in the same area.

All these cases are of varying complexity. Some of them are well documented in your services. I would be most grateful if at last something could be done to in order to ease the situation and bring these long standing cases to a close. My primary concern in these cases, as in all the others I deal with, is that of the best interests of the children. In these particular cases, the foreign parents have been left with a feeling of deeply unjust treatment by the authorities, in particular with regard to the adjudication and application of visiting rights and what seems to be biased activity on the part of the social workers in the various Jugendamts in regard to the rights of access for foreign parents to their children in Germany. In all these cases, the children have been alienated from the non-custodial parent either consciously by the custodial parent or by the mere fact of being unable to have any real contact with their children, through lack of visiting rights or their enforcement. It is evident that after such long time-lapses without any contact with the non custodial parent, the children may declare that they do not want any contact. However in these cases it is my view that the the obstacle course that these parents have had to run is the root of this problem and therefore every effort must be made to redress the situation for the benefit of all concerned and the long term well-being of the children themselves.

My concern is such regarding this situation I intend sending a copy of this letter to Chancellor Schroeder and to the Federal Justice Minister.

Yours sincerely,

Mary Banotti MEP

cc Chancellor Gerhard Schroeder
Ms Brigitte Zypries, Federal Minister of Justice
Ms Evelyne Gebhardt MEP