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# Major CJEU Case Law on the Brussels IIa Regulation, including on habitual residence in child abduction, and *forum non conveniens*

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**EUROPEAN CIVIL PROCEDURE IN FAMILY LAW  
MATTERS CI/2020/10**

3-4 December 2020

Academy of European Law (ERA)

EJTN CIVIL JUSTICE SEMINAR (online)

## Habitual residence in unlawful removal or retention of a child

CJEU, 2.04.2009, C-523/07, A.

- The **physical presence alone** of the child in a Member State, as a jurisdictional rule alternative to that laid down in Article 8 of the Regulation, **is not sufficient** to establish the habitual residence of the child.
- Habitual residence corresponds to **the place which reflects some degree of integration by the child in a social and family environment**. To that end, in particular **the duration, regularity, conditions and reasons for the stay** on the territory of a Member State and the family's move to that State, **the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships** of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.



## Habitual residence in unlawful removal or retention of a child

CJEU, 22.12.2010, C-497/10 PPU, *Mercredi*

- **The child's age** may be taken into consideration both in the context of examining the loss of a habitual residence and in that of the acquisition of a new habitual residence. As a very young child is particularly dependent on his or her mother, who constitutes his or her 'life horizon', it is clear that the mother's wish lawfully to leave one Member State to settle or resettle in another Member State is a crucial factor in assessing the loss of that child's habitual residence. The child's extreme youth implies, moreover, that the conditions for her integration into her new family and social environment are likely to be satisfied very quickly.
- That primary consideration of the wish of the person with sole parental authority does not in any way imply that there is no need to take other factors into account.



## Habitual residence in unlawful removal or retention of a child

CJEU, 9.10.2014, Case C-376/14 PPU, *C. v. M.*

- In its preliminary ruling the Court noted, *inter alia*, that where **the removal of a child has taken place in accordance with a judgment which was provisionally enforceable and which was thereafter overturned, the child's habitual residence must be determined by undertaking an assessment of all the circumstances of fact. Whilst it was possible the child's habitual residence may have changed, account must be taken of the fact that the judgment authorising the removal could be provisionally enforced and that an appeal had been brought.**
- Relying on its jurisprudential precedents (*A*, EU:C:2009:225, [37] and [44], and *Mercredi*, EU:C:2010:829, [47] and [56]), the Court reiterated its established position with regard to habitual residence noting, at [51], that: "[...] in addition to the physical presence of the child in a Member State, other factors must also make it clear that that presence is not in any way temporary or intermittent and that the child's residence corresponds to the place which reflects some degree of integration in a social and family environment".



## Habitual residence in unlawful removal or retention of a child

CJEU, 8.06.2017, C-111/17 PPU, *OL v PQ*

- If a child has been born and has lived continuously with her mother for several months, in accordance with the joint wishes of her parents, in a Member State other than that where those parents were habitually resident before her birth, **the initial intention of the parents with respect to the return of the mother, together with the child, to the latter Member State cannot allow the conclusion that that child was ‘habitually resident’ there, within the meaning of that regulation.**
- In addition to reiterating that “habitual residence” must be established based on all the circumstances specific to the case, taking into account physical presence and other factors, particularly the child’s social and family environment, the Court gave four reasons in coming to the above conclusion. Firstly, it stated that habitual residence is a question of fact. Secondly, the Court noted that the determination of habitual residence precedes the identification of custody rights and breaches thereof. Thirdly, the Court considered that having parental intention as the main factor to determine habitual residence would be detrimental to the effectiveness and expeditiousness of return proceedings. Fourthly, the Court stated that this would also be contrary to the aim of the Hague Convention to restore the *status quo ante*. Finally, the Court found that, in the case at hand, the child’s best interests would not require a determination of habitual residence based upon the parents’ intentions



## Habitual residence in unlawful removal or retention of a child CJEU, 28.06.2018, C-512/17, H.R.

### Decisive factors in establishing habitual residence:

- – the fact that, from its birth until its parents' separation, the child **generally lived** with those parents in a specific place;
- – the fact that the parent who, in practice, has had custody of the child since the couple's separation **continues to stay in that place** with the child **on a daily basis and is employed there** under an employment contract of indefinite duration; and
- – the fact that the **child has regular contact** there with its other parent, who is still resident in that place.



## Habitual residence in unlawful removal or retention of a child

CJEU, 17.10.2018, C-393/18 PPU, *UD v XB*

- A child must have been **physically present** in a Member State in order to be regarded as habitually resident in that Member State, for the purposes of that provision. Circumstances such as those in the main proceedings, assuming that they are proven, that is to say, first, the fact that the **father's coercion of the mother** had the effect of her giving birth to their child in a third country where she has resided with that child ever since, and, secondly, the **breach of the mother's or the child's rights, do not have any bearing in that regard.**



## Poll - Question

Alina is a Polish national who has been living in Brussels since 2005, where she works on the basis of a permanent employment contract. Christophe is a Belgian national who also lives and works in Brussels.

In 2015, they have a daughter, born in Brussels and with dual Polish and Belgian nationality. Alina and her family communicate with the child in Polish, while Christophe speaks to her in French. Their daughter mainly speaks and understands the first of these two languages.

Following the birth of their daughter, Alina, with Christophe's consent, often visits her family in Poland.

Alina and Christophe's separated in August 2016 and, since then, have lived separately in Brussels.

Their daughter does not attend crèche or nursery school. Alina's mother assists her in caring for the child on a day-to-day basis.

Alina wishes to settle in Poland with her daughter, a move opposed by Christophe. In that context, in October 2016 Alina applies to the District Court of Cracovia, asking it to establish the place of residence of her daughter as her own place of residence, wherever that might be, and to put in place visiting rights for Christophe.

Is the jurisdiction with the Cracow court established properly?

- A. Yes, because the child has strong connections with Poland (language, holidays, grandmother)
- B. No, because the child generally lives with her parents in Brussels, where she has regular contacts with her father





# Forum Non Conveniens – Article 15 – Recent CJEU jurisprudence

## Case C-530/18, *E.P. v F.O.*

Article 15(1) of Regulation (EC) No 2201/2003 must be interpreted to the effect that:

- 1. it establishes an **exception to the general rule of jurisdiction laid down in Article 8** of Regulation No 2201/2003, according to which the jurisdiction of the courts of the Member States is determined by the place where the child is habitually resident at the time the courts are seised.
- 2. if one or more of the five alternative criteria which it lays down exhaustively in order to assess whether the child has a particular connection to another Member State, other than the State of her habitual residence, are satisfied, the court having jurisdiction by virtue of Article 8(1) of that regulation has the option to transfer the case to a court which it considers to be better placed to deal with the dispute before it, but is not obliged to do so. **If the court having jurisdiction reaches the conclusion that the relations which link the child concerned to the Member State of her habitual residence are stronger than those which link her to another Member State, that conclusion is sufficient to rule out the application of Article 15 of that regulation.**
- 3. the existence of **differences between the rules of law, in particular the rules of procedure, of a Member State having jurisdiction as to the substance of a case and those of another Member State with which the child concerned has a particular connection, such as the examination of cases in camera by specialist judges, does not constitute, in a general and abstract way, a relevant criterion**, in light of the best interests of the child, when assessing whether the courts of that Member State are better placed to hear that case. The court having jurisdiction may take those differences into consideration only if they are such as to provide genuine and specific added value with respect to the decision to be taken in relation to that child, as compared with the possibility of the case remaining before that court.



# Selected CJEU Case Law for further consideration:

## Case C-523/07, A.

- Judgment of the Court (Third Chamber) of 2 April 2009.
- A.
- Reference for a preliminary ruling: Korkein hallinto-oikeus - Finland.
- Judicial cooperation in civil matters - Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility - Regulation (EC) No 2201/2003 - Substantive scope - Definition of 'civil matters' - Decision relating to the taking into care and placement of children outside the family home - Child's habitual residence - Protective measures - Jurisdiction.
- Case C-523/07.
- Judgment: ECLI:EU:C:2009:225
- Opinion: ECLI:EU:C:2009:39
- Ruling:
  1. **Article 1(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that a decision ordering that a child be immediately taken into care and placed outside his original home is covered by the term 'civil matters', for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.**
  2. **The concept of 'habitual residence' under Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's**



# Selected CJEU Case Law for further consideration:

## Case C-523/07, A. (cont'd)

- **move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.**
- **3. A protective measure, such as the taking into care of children, may be decided by a national court under Article 20 of Regulation No 2201/2003 if the following conditions are satisfied:**
  - – **the measure must be urgent;**
  - – **it must be taken in respect of persons in the Member State concerned, and**
  - – **it must be provisional.**
- **4. The taking of the measure and its binding nature are determined in accordance with national law. After the protective measure has been taken, the national court is not required to transfer the case to the court of another Member State having jurisdiction. However, in so far as the protection of the best interests of the child so requires, the national court which has taken provisional or protective measures must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.**
- **5. Where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.**



# Selected CJEU Case Law for further consideration:

## Case C-497/10 PPU, *Mercredi*

- Judgment of the Court (First Chamber) of 22 December 2010.
- Barbara Mercredi v Richard Chaffe.
- Reference for a preliminary ruling: Court of Appeal (England & Wales) (Civil Division) - United Kingdom.
- Judicial cooperation in civil matters - Regulation (EC) No 2201/2003 - Matrimonial matters and parental responsibility - Child whose parents are not married - Concept of 'habitual residence' of an infant - Concept of 'rights of custody'.
- Case C-497/10 PPU
- Judgment ECLI:EU:C:2010:829
- Opinion: ECLI:EU:C:2010:738
- Ruling:
  1. **The concept of 'habitual residence', for the purposes of Articles 8 and 10 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State**



# Selected CJEU Case Law for further consideration:

## Case C-497/10 PPU, *Mercredi* (cont'd)

- and for the mother's move to that State and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case.
- If the application of the abovementioned tests were, in the case in the main proceedings, to lead to the conclusion that the child's habitual residence cannot be established, which court has jurisdiction would have to be determined on the basis of the criterion of the child's presence, under Article 13 of the Regulation.
- 2. Judgments of a court of a Member State which refuse to order the prompt return of a child under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction to the jurisdiction of a court of another Member State and which concern parental responsibility for that child have no effect on judgments which have to be delivered in that other Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.



# Selected CJEU Case Law for further consideration:

## Case C-376/14 PPU, *C. v M.*

- Judgment of the Court (Third Chamber), 9 October 2014
- C v M
- Request for a preliminary ruling, from the Supreme Court (Ireland)
- Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Wrongful retention — Habitual residence of the child
- Case C-376/14 PPU
- Judgment: ECLI:EU:C:2014:2268
- Opinion: ECLI:EU:C:2014:2275
- Ruling
- **1. Articles 2(11) and 11 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that where the removal of a child has taken place in accordance with a judgment which was provisionally enforceable and which was thereafter overturned by a judgment which fixed the residence of the child at the home of the parent living in the Member State of origin, the court of the Member State to which the child was removed, seised of an application for the return of the child, must determine,**



# Selected CJEU Case Law for further consideration:

## Case C-376/14 PPU, *C. v M.* (cont'd)

- **by undertaking an assessment of all the circumstances of fact specific to the individual case, whether the child was still habitually resident in the Member State of origin immediately before the alleged wrongful retention. As part of that assessment , it is important that account be taken of the fact that the judgment authorising the removal could be provisionally enforced and that an appeal had been brought against it.**
- **2. Regulation No 2201/2003 must be interpreted as meaning that, in circumstances where the removal of a child has taken place in accordance with a court judgment which was provisionally enforceable and which was thereafter overturned by a court judgment fixing the child's residence at the home of the parent living in the Member State of origin, the failure to return the child to that Member State following the latter judgment is wrongful and Article 11 of the Regulation is applicable if it is held that the child was still habitually resident in that Member State immediately before the retention. If it is held, conversely, that the child was at that time no longer habitually resident in the Member State of origin, a decision dismissing the application for return based on that provision is without prejudice to the application of the rules established in Chapter III of the Regulation relating to the recognition and enforcement of judgments given in a Member State.**



# Selected CJEU Case Law for further consideration:

## Case Case C-530/18, *E.P. v F.O.*

- Order of the Court (Eighth Chamber) of 10 July 2019
- EP v FO
- Request for a preliminary ruling from the Tribunalul Ilfov
- Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 15 — Transfer of a case to a court of another Member State better placed to hear it — Exception to the general rule that the court for the place where the child is habitually resident has jurisdiction — Particular connection with another Member State — Evidence making it possible to determine the better placed court — Existence of different rules of law — Best interests of the child
- Case C-530/18
- Order ECLI:EU:C:2019:583
- Ruling
- **1. Article 15(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that it establishes an exception to the general rule of jurisdiction laid down in Article 8 of Regulation No 2201/2003, according to which the jurisdiction of the courts of the Member States is determined by the place where the child is habitually resident at the time the courts are seised.**





# Selected CJEU Case Law for further consideration:

## Case C-530/18, *E.P. v F.O.* (cont'd)

- 2. Article 15 of Regulation No 2201/2003 must be interpreted to the effect that, if one or more of the five alternative criteria which it lays down exhaustively in order to assess whether the child has a particular connection to another Member State, other than the State of her habitual residence, are satisfied, the court having jurisdiction by virtue of Article 8(1) of that regulation has the option to transfer the case to a court which it considers to be better placed to deal with the dispute before it, but is not obliged to do so. If the court having jurisdiction reaches the conclusion that the relations which link the child concerned to the Member State of her habitual residence are stronger than those which link her to another Member State, that conclusion is sufficient to rule out the application of Article 15 of that regulation.
- 3. Article 15 of Regulation No 2201/2003 must be interpreted to the effect that the existence of differences between the rules of law, in particular the rules of procedure, of a Member State having jurisdiction as to the substance of a case and those of another Member State with which the child concerned has a particular connection, such as the examination of cases in camera by specialist judges, does not constitute, in a general and abstract way, a relevant criterion, in light of the best interests of the child, when assessing whether the courts of that Member State are better placed to hear that case. The court having jurisdiction may take those differences into consideration only if they are such as to provide genuine and specific added value with respect to the decision to be taken in relation to that child, as compared with the possibility of the case remaining before that court.



# Selected CJEU Case Law for further consideration:

## Case C-428/15, *Child and Family Agency v J.D.*

- Judgment of the Court (Third Chamber) of 27 October 2016
- Child and Family Agency v J. D.
- Request for a preliminary ruling from the Supreme Court (Ireland)
- Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 15 — Transfer of a case to a court of another Member State — Scope — Conditions under which applicable — Court better placed — Best interests of the child
- Case C-428/15
- Judgment : ECLI:EU:C:2016:819
- Opinion : ECLI:EU:C:2016:458
- Ruling:
  1. **Article 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that it is applicable where a child protection application brought under public law by the competent authority of a Member State concerns the adoption of measures relating to parental responsibility, such as the application at issue in the main proceedings, where it is a necessary consequence of a court**



# Selected CJEU Case Law for further consideration:

## Case C-428/15, *Child and Family Agency v J.D.* (cont'd)

- of another Member State assuming jurisdiction that an authority of that other Member State thereafter commence proceedings that are separate from those brought in the first Member State, pursuant to its own domestic law and possibly relating to different factual circumstances.
- 2. Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that:
  - – in order to determine that a court of another Member State with which the child has a particular connection is better placed, the court having jurisdiction in a Member State must be satisfied that the transfer of the case to that other court is such as to provide genuine and specific added value to the examination of that case, taking into account, inter alia, the rules of procedure applicable in that other Member State;
  - – in order to determine that such a transfer is in the best interests of the child, the court having jurisdiction in a Member State must be satisfied, in particular, that that transfer is not liable to be detrimental to the situation of the child.
- 3. Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the court having jurisdiction in a Member State must not take into account, when applying that provision in a given case relating to parental responsibility, either the effect of a possible transfer of that case to a court of another Member State on the right of freedom of movement of persons concerned other than the child in question, or the reason why the mother of that child exercised that right, prior to that court being seised, unless those considerations are such that there may be adverse repercussions on the situation of that child.
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# Selected CJEU Case Law for further consideration:

## Case C-478/17, *I.Q. v J.P.*

- Judgment of the Court (Fifth Chamber) of 4 October 2018
- IQ v JP
- Request for a preliminary ruling from the Tribunalul Cluj
- Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 15 — Transfer to a court better placed to hear the case — Scope — Article 19 — Lis pendens
- Case C-478/17
- Judgment: ECLI:EU:C:2018:812
- Opinion: ECLI:EU:C:2018:552
- Ruling
- **Article 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as not applying in circumstances, such as those in the main proceedings, in which both courts seised have jurisdiction as to the substance of the matter under Articles 12 and 8, respectively, of that regulation.**



**Thank you for your attention!**

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