



Linguistics
Linguistique



ENGLISH FOR JUDICIAL
COOPERATION IN FAMILY LAW

HANDBOOK



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FOREWORD OF THE EJTN'S SECRETARY GENERAL

Development of language skills is essential to enable exchanges between judicial authorities and individual judges, prosecutors and court staff, paving the way for mutual trust and a better understanding of foreign legal and judicial systems. Thus, mastering a foreign language and its legal terminology should form an inevitable part of the training of judiciary.

The European Judicial Training Network (EJTN) has devoted attention to design and implementation of advanced and technical language trainings, in order to complement and support the basic language training primarily provided by its Members at national level. Linguistic training is one of the top priorities in EJTN's strategic plan 2021-2027. One visible change in 2020 was the creation of a dedicated EJTN Working Group Linguistics that replaced the former Sub-Working Group. In 2020, the first year of the pandemic, 246 participants attended – mostly online – the eleven linguistics trainings and four Summer Schools offered by EJTN's Linguistics Programme. EJTN's added value notably lies in the tools provided to all its Members like linguistic handbooks and glossaries, self-assessment tests and marked tests available as e-learning modules.

This Handbook is one of such tools. It is the 1st edition of the linguistic handbook on family law compiling the most relevant training materials used in EJTN linguistic courses delivered regularly in this area of law since November 2016.

Even though substantive family law namely falls within the exclusive competence of Member States, and even though family law is linked to the national identity and traditions, European cross-border mobility entails more and more cross-border family law cases. With this publication we aim to help members of judiciary to be fit to correctly understand and apply relevant EU law instruments. Definitions, exercises and examinations of real cases make the Handbook an invaluable, hands-on resource.

On behalf of the EJTN, I would like to express my sincere gratitude to the authors of the texts and exercises in the Handbook for their dedicated work. I wish also to express appreciation to the EJTN Project Coordinator, Mr. Ondrej Strnad, for his dedication in executing the EJTN linguistic activities, as well as members of the EJTN Linguistic Working Group, chaired by Ms. Renata Vystrčilová from the Czech Judicial Academy, which supervises all EJTN linguistic activities.

Enjoy using this Handbook.

Markus Brückner
EJTN Secretary General

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UNIT 1

INTRODUCTION TO EUROPEAN FAMILY LAW

INTRODUCTION

Aleš GALIČ

1. THE LEGAL BASIS – COMPETENCE OF THE UNION OR OF THE MEMBER STATES

The title “*European (or EU) Family Law*” might sound too promising and too ambitious, as substantive family law falls within the exclusive competence of Member States. There are no uniform EU-wide rules as to, for example, who and how can conclude a valid marriage and whether civil unions and registered partnerships are available, or rules setting out the terms under which an annulment of marriage or a divorce may be granted. In addition, it is the competence of Member States to set up rules on attribution, exercise, delegation, restriction or termination of parental responsibility and to determine how decisions on custody and on access to children are to be made and how and by whom (jointly or separately) these rights are exercised. The same applies to issues of capacity and emancipation, to child welfare measures, to substantive preconditions for adoption, to establishing and challenging paternity and, for example, to rules (if there are any at all) on surrogacy. Neither has the EU any competence to lay down substantive rules on spousal and child maintenance (e.g. who can claim it and for how long; whether it can be claimed retroactively; whether it is ordered in monthly instalments, perhaps as a percentage of a (real or average) salary or as a lump sum). Each Member state also has its own rules determining the statutory matrimonial property regime along with the rules as to whether the parties are allowed to deviate from it by way of prenuptial agreements. Adopting rules of procedure in family law matters such as capacity, standing, representation, the exercise of the right to be heard, admissibility and taking of evidence, or appeals, is, generally, also a competence of Member States. Member states are thus free to decide whether rules of contentious procedure or non-contentious procedure (or even administrative procedure, with a possibility of a judicial review) will apply and whether specialised family courts, with special rules of procedure, will be set up.

National rules of family law are to a large degree culturally determined and they are often perceived to be linked to national identity and traditions. Therefore, it cannot realistically be expected that the Member States will easily give up their legislative competence in this sensitive policy area.

This being said, a rapid growth of European cross-border mobility also means that the number of families and couples made up of people from different Member States is constantly growing. With the increase in migration within the EU, more family law cases with cross-border implications

started to appear. As family law varies significantly from one Member State to the other, this entails numerous novel and complex issues in family law. At any rate, the importance of internationalisation of family law is growing and so is the need for the EU to enter what had traditionally been a national domain.

The European Union has soon realised about the potential negative consequences of differences in national laws and in particular, a lack of coordination and uniform rules concerning cross-border implications of family law matters. Irreconcilable judgments and a different treatment of a family status or of a spousal property regime, which might be recognised in one Member State, but not in the other, would jeopardise the right to free movement of persons, which is one of the four essential principles of the internal market (along with the free movement of goods, services and capital). Excessive forum shopping and the “rush to a court” would be one further negative consequence and legal certainty would be seriously undermined. In addition, ineffective enforcement of foreign judgments is particularly damaging when it concerns most vulnerable parties (such as children who are maintenance creditors and children who are victims of international child abduction).

So, how could the EU legislature move into the domain of family law so that European citizens may more easily exercise their rights across the Union? With The Maastricht Treaty (1992) judicial cooperation in civil matters was determined as an area of common interest to EU Member States (third pillar). The most important step forward followed with the adoption of the Amsterdam Treaty (1999), which (*inter alia*) created the area of freedom, security and justice. Judicial cooperation in civil matters was thereby transferred to the first pillar, which means that it fell into the scope of immediate legislative competence of European Union. The Treaty on the Functioning of the European Union (TFEU; the *Lisbon Treaty*) of 2007 brought further expansion of the judicial cooperation in civil matters.

A creation of a genuine area of freedom, security and justice is one of the key objectives of the European Union (Article 67 TFEU). In this framework, the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters (Para. 4 of Art. 67 TFEU). For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market (Article 81 TFEU). The EU is thus granted competence to expand to domains which had traditionally fallen within the exclusive competence of Member States. The EU has already used the said legal basis extensively. Thereby it emphasised the need for mutual recognition and enforcement of judgments and the need for uniform rules on international jurisdiction (and, perhaps to a somewhat lesser extent, on applicable law). Family law nevertheless remains a sensitive policy area. This is evidenced in the special rule of Paragraph 2 of Article 81 TFEU. Whereas other areas of judicial cooperation in civil matters fall within the scope of so-called ordinary legislative procedure (where the EU Parliament and the Council are on equal footing), measures concerning family law with cross-border implications are established by the Council, acting in accordance with a special legislative procedure (the EU Parliament is merely consulted).

The interpretation of the condition that the EU is only competent to regulate civil (including family) law insofar it has “*cross-border implications*” is far from being straightforward. It is however generally accepted that the so-called “*communitarisation*” of family law concerns its international private law aspects (international jurisdiction, applicable law, recognition and enforcement).

2. INSTRUMENTS ADOPTED IN THE FRAMEWORK OF JUDICIAL COOPERATION IN CIVIL MATTERS

The cornerstone of judicial cooperation in family matters in the European Union is the Brussels II Regulation. It establishes uniform jurisdiction rules for divorce, separation and the annulment of marriage and for disputes about parental responsibility in cross-border situations (including international child abduction) as well as rules on recognition and enforcement of judgments in the above matters. The “first” Brussels II Regulation was adopted in 2000,¹ followed by the amended Regulation in 2003² and, most recently, by the new Brussels IIbis, adopted in 2019 (which, in general, applies from 1 August 2022).³

The second instrument of EU family law, adopted under Paragraph 3 of Article 81 TFEU, is Council Regulation (EC) No 4/2009 of 18 December, 2008 on jurisdiction, applicable law, recognition and decisions and cooperation in matters relating to maintenance obligations (“the Maintenance Regulation”).

Three further Regulations were adopted pursuant to the rules of enhanced cooperation. This is a procedure where a minimum of nine Member States are allowed to establish integration in an area within the EU but without the other EU countries participating (Articles 326-334 TFEU). Authorisation to proceed with such enhanced cooperation is granted by the Council (thus, *all* Member States must agree to allow *some* member states to proceed with it) on a proposal from the Commission and by consent of the European Parliament.

The first Regulation implementing such enhanced cooperation in the area of family law was the Rome III Regulation (Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation).

It was followed by two “twin” Regulations concerning the property regime of spouses and registered couples: Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, and Regulation (EU) 2016/1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

The above overview shows that existing EU legal instruments, even if restricted to issues of international private law, do not cover all areas of family law. For example, matters of jurisdiction, recognition and enforcement of judgments as well as of applicable law for adoption matters and for establishing and challenging parentage, remain regulated at the national level. The above Regulations must also be differentiated with regard to the legal basis on which they were adopted: either the rules on special legislative procedure in Art. 81, Para. 3 TFEU or the rules on “enhanced cooperation”) and, by extension, with regard to question whether all Member States (with the

1 Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.

2 Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

3 Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.

exception of Denmark⁴) are bound by them or, as is the case with the enhanced cooperation, the Member States freely decide whether they wish to participate. Turning to another point, some Regulations cover either only issues of procedure, i.e. jurisdiction and recognition and enforcement of judgments (the Brussels II Regulation), some cover only the issue of applicable law (the Rome III Regulation), whereas the others cover both (the Maintenance Regulation and the Matrimonial Property Regime Regulation). This all shows that EU family law is characterised by a considerable degree of fragmentation.

3. THE (ATTEMPTED) ABOLISHMENT OF EXEQUATUR

The issue of exequatur (or rather the abolishment thereof) has long been in the focus of the development of judicial cooperation in civil (including family) matters and in the legislative processes leading to the adoption of the regulations discussed above. The 2003 Brussels II Regulation (similar to the Brussels I Regulation, its counterpart for civil and commercial matters) while streamlining the procedure for obtaining a declaration of enforceability as well as considerably restricting grounds for refusal of recognition from other member states, still adhered to traditional principles of international civil procedural law. Judgments from the country of origin were not directly enforceable in other member states, but were still subject to obtaining exequatur (declaration of enforceability) in the country of enforcement. Yet the seeds for abolition of exequatur were planted already in the 1999 Tampere Programme. There it was declared that “In civil matters the European Council calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State.” An even clearer language was used in the 2001 Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters. Here the goal of “Abolition, pure and simple, of any checks on the foreign judgment” was proclaimed so that “each requested State treats these national judgments as if they had been delivered by one of its own courts”. In the Hague Programme (2004) and in the Stockholm Programme (2009) the Commission further stressed the need to continue the implementation of mutual recognition and to extend it to new areas such as family property, successions and wills.

Actually, the first abolishment of exequatur can be found already in the Brussels II Regulation (Regulation No. 2201/2003), but only limited to two very specific types of decisions: decisions concerning access to child and decisions concerning return of the child in case of child abduction. A genuine abolishment of the exequatur has however been achieved in the Maintenance Regulation (Regulation No. 4/2009). The next opportunity for a further suppression of exequatur came with the recent recasting of the Brussels II Regulation (Regulation 2019/1111), which – in this part – follows what had already been achieved in the recast Brussels I Regulation (Regulation 1215/2012) for civil and commercial matters. In principle, the need for exequatur – in the sense of special procedure for declaration of enforceability in the member state of enforcement – was abolished. However, in a substantive sense the criterion of review (relating foremost to certain minimum standards as well as public policy) has been retained, but the burden of initiative is put on the party opposing recognition, who can file a request for a special review in the country of enforcement.

4 Denmark does not participate in the area of freedom, security and justice measures. It has however acceded, by way of agreement with the EU, to certain parts (jurisdiction) of the Maintenance Regulation.

4. OTHER SOURCES OF EUROPEAN FAMILY LAW

In a broader sense, Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters (which sets up a mechanism allowing for a direct recognition of protection/restraining orders issued as a civil law measure between Member States) could also be considered a part of European family law. On the contrary, at least in most Member States, inheritance law (successions law) is considered to be a separate field of law and the recent EU Instrument in this field, the Successions Regulation,⁵ was not adopted as a measure “concerning family law” within the meaning of Article 81 TFEU. In any case, comparing the Successions Regulation on the one hand with the Matrimonial Property Regulation on the other shows that it is often not easy to delimit matters of family law from other civil law matters.

Numerous other Regulations, adopted under the title of judicial cooperation in civil matters, which are generally applicable to civil matters (e.g. concerning cross-border service of judicial documents⁶ and cross-border taking of evidence⁷), are important also for cross-border family disputes.

Pursuant to Article 21(2) TFEU the EU may adopt measures to attain the objective of free movement of EU citizens. Thus, certain EU instruments, which were not adopted within the framework of the judicial cooperation in civil matters, can nevertheless have strong implications for family law. This is the case of, for example, Council Directive 2003/86/EC on the right to family reunification. One further example is Regulation (EU) 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union. The same applies to issues of (recognition of) personal names and surnames, which are often dealt within the context of prohibition of any discrimination on the grounds of nationality (Art. 18 TFEU).

The Charter of the Fundamental Rights of the European Union (“the Charter”), which binds institutions and bodies of the Union and Member States when they are implementing Union law, is one further important source of European family law. It contains provisions which are of immediate importance for judicial cooperation in family law matters, in particular Article 7 (Right to respect for private and family life), Article 9 (Right to marry and right to found a family) and Article 24 (The rights of the child). Of course, the right to a fair trial enshrined in Article 47 of the Charter is important for all civil (including family) matters. The Charter is influenced by the European Convention of Human Rights (for example, Article 7 of the Charter corresponds to Article 8 ECHR, whereas Article 47 of the Charter follows the wording of Article 6 ECHR) and insofar as this Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down by the said Convention. According to the explanatory memorandum the same applies to the case-law of the European Court for Human Rights. Understandably, when adopting regulation in the field of family law the European legislature has to respect the fundamental rights and to observe the principles recognised by the Charter. Moreover, the Charter is increasingly often applied and referred to in the case law of the CJEU concerning judicial co-operation in family law matters.⁸

5 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

6 Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

7 Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters.

8 See, by way of example, CJEU C-491/10, *Aguirre Zarraga*, 22 December 2010 and most recently CJEU C603/20 PPU, *SS v MCP*, 24 March 2021.

An overview of the development of the European family law would be incomplete without mentioning the conventions adopted by the Hague Conference on Private International Law (HCCH). As of 2007 the EU participates in the HCCH as a full member. In no other field of law has the interplay between the Hague conventions on the one hand and the EU instruments on the other hand been so closely interwoven as in the field of family law. Most notably, a direct reliance on the application of the Hague Protocol on the Law Applicable to Maintenance Obligations ("the 2007 Hague Protocol") is made in the EU Maintenance Regulation. Practically even more important, however, is the link to the 1980 The Hague Convention on the Civil Aspects of International Child Abduction which is made in the Brussels II Regulation. This Regulation refers to and supplements certain provisions of the Hague Convention and in matters covered by the Regulation European judges often have to simultaneously apply and carefully consider both these instruments.

Certain other international instruments are also of immediate importance in this context, in particular the (United Nations) Convention on the Rights of the Child of 1989 and the (Council of Europe) European Convention on the Exercise of Children's Rights of 1996.

Finally, the role of the Court of Justice of the European Union (CJEU) also has to be mentioned. Its case law forms an integral and essential part of European family law which is absolutely essential for a proper understanding and for a correct application of the legal instruments, discussed above. The CJEU has, upon requests for preliminary rulings submitted by national courts, clarified and interpreted several concepts in the mentioned EU instruments and has thus contributed massively to the "Europeanisation" of family law (see numerous references to judgments of the Court in the following chapters of this Handbook).

LANGUAGE EXERCISES⁹

I. PROVIDE THE TERM FOR THE FOLLOWING DEFINITIONS. FOR EACH TERM YOU WILL FIND A CLUE. THE FIRST TERM HAS BEEN DONE FOR YOU.

<i>annulment/nullity</i>	<i>guardian</i>	<i>paternity</i>
<i>child abduction</i>	<i>holder</i>	<i>prenuptial agreement</i>
<i>civil partnership/union</i>	<i>left-behind parent</i>	<i>rights of access ("contact" in the UK)</i>
<i>cohabitation</i>	<i>maintenance</i>	<i>separation</i>
<i>custody</i>	<i>marital/matrimonial property</i>	<i>spouse</i>
<i>desertion</i>	<i>matrimonial</i>	<i>taking parent</i>
<i>divorce</i>	<i>parental responsibility</i>	<i>wrongful removal</i>
<i>domestic violence</i>		

1. left-behind parent: The parent who claims that his/her custody rights were breached by a wrongful removal or retention.
2. _____: The individual you are married to; husband or wife. Depending on the Member State, it could be a person of the same or of the opposite sex.
3. _____: Regular payments by one party of a marriage to another (known as 'alimony' in the US); such payments can be for the other party, for the children, or for both.
4. _____: This happens where a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the _____ or retention; and b) at the time of _____ or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the _____ or retention.
5. _____: A legal relationship which can be registered by two people who aren't related to each other (in some Member States, available to same-sex and opposite-sex couples); a legally recognised relationship between two people.
6. _____: The care, control, guardianship, and maintenance of a child that may be awarded to one of the parents in divorce or separation proceedings (it is the term previously used in the UK for the parent who had chief rights over the children). The term is still used in some Member States and in the US.
7. _____: Parental authority, or any analogous relationship or authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child. It encompasses 'rights of custody' as well as 'rights of contact', but is much broader than these two.
8. _____: An individual appointed to represent the interests of a child.

9 Unlike previous EJTN handbooks, this volume does not contain a general description of Legal English or EU English. The reader is kindly referred to other volumes in the EJTN Linguistics series for such description (<https://www.ejtn.eu/News/Spotlight-EJTNs-6-linguistics-handbooks-and-guides/>).

9. _____: This includes many different facets of abuse within the family, which may be physical or psychological; it may be directed towards the child and/or towards the partner and/or other family members.
10. _____: The arrangements for the non-custodial parent to spend time with his/her child(ren); it also includes the right of a non-custodial parent to make inquiries and to be given information concerning the child's health, education and welfare.
11. _____: Legal proceedings which end your contract of marriage; the termination of a marriage by legal action.
12. _____: Property and debt that a couple acquire during their marriage.
13. _____: The dissolution of a marriage in legal proceedings in which the marriage is declared null and void as though it never occurred.
14. _____: The parent who is alleged to have wrongfully removed a child from his/her place of habitual residence to another State or to have wrongfully retained a child in another State.
15. _____: Being a child's biological father.
16. _____: An alternative to divorce; whilst not ending the marriage, it allows the court to look at the financial arrangements between the parties, and is usually used when the parties have an overriding reason for not wanting a divorce.
17. _____: Related to marriage or people who are married.
18. _____: A contract that two parties enter into in contemplation of marriage which usually establishes the property and financial rights of each spouse in the event of a divorce.
19. _____: The state of an unmarried couple, who share a relationship, living together.
20. _____: The voluntary abandonment of one spouse by the other; it occurs when a spouse leaves the marital home for a specified length of time without consent of the other spouse or without a reason.
21. _____: When a parent takes/removes a child to another country without the express consent and agreement of the parent(s), usually intending to change the child's country of habitual residence; this could also be carried out by a relative, a friend, an acquaintance...
22. _____: Term used to refer to the person who has parental responsibility.

II. COMPLETE THE TABLE WITH THE MISSING WORD CATEGORIES.

VERB	NOUN	ADJECTIVE
1. abduct		
2. act		
3. testify		
4. annul		
5. appeal		
6. assist		
7.		authorised, authorising
8.	claim, claimant	
12. hear		
13. issue		
15. -----	parent	
16. recognise		
17.		removed, removing, removable
18.	request	
19.	retention	
20. submit		
21. sue		

III. FILL IN THE GAPS WITH THE APPROPRIATE FORM OF THE WORD GIVEN IN BRACKETS.

- This Regulation does not apply to the _____ (establish) of _____ (parent), since this is a different matter from the _____ (attribute) of parental _____ (responsible).
- The matters referred to in the previous paragraph may deal with _____ (guardian) and similar institutions, as well as with the _____ (place) of the child in a foster family or in _____ (institution) care.
- The courts of the Member State where the child was _____ (habit) resident immediately before the _____ (wrong) removal or retention shall retain their jurisdiction until the child has acquired a habitual _____ (reside) in another Member State.
- A judgment relating to a divorce, legal _____ (separate) or marriage _____ (annul) shall not be recognised if it is _____ (reconcile, negative.) with an earlier judgment given in another Member State.

5. A party seeking or contesting recognition or applying for a _____ (declare) of _____ (enforce) shall produce a copy of the judgment which satisfies the conditions necessary to establish its _____ (authentic).

IV. READ THE EXTRACT OF REGULATION 2201/2003 AND FIND MORE FORMAL EQUIVALENTS FOR THE WORDS IN BOLD.

1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:
 - (a) divorce, legal separation or marriage annulment;
 - (b) the **a** _____ (**establishment**), exercise, delegation, restriction or **t** _____ (**end**) of parental responsibility.
2. The matters referred to in paragraph 1(b) may, in particular, deal with:
 - (a) rights of **c** _____ (**care**) and rights of access;
 - (b) guardianship, curatorship and similar institutions;
 - (c) the **d** _____ (**appointment**) and functions of any person or body having charge of the child's person or property, representing or assisting the child;
 - (d) the **p** _____ (**locating**) of the child in a foster family or in institutional care;
 - (e) measures for the protection of the child relating to the administration, conservation or **d** _____ (**giving away**) of the child's property.
3. This Regulation shall not apply to:
 - (a) the establishment or **c** _____ (**disapproving**) of a parent-child relationship;
 - (b) decisions on adoption, measures preparatory to adoption, or the annulment or **r** _____ (**cancelling**) of adoption;
 - (c) the name and forenames of the child;
 - (d) emancipation;
 - (e) maintenance obligations;
 - (f) trusts or succession;
 - (g) measures taken as a result of criminal **o** _____ (**acts**) committed by children.

V. MATCH THE DEFINITION WITH THE RIGHT WORD. IN EACH OF THE CASES, ONE DEFINITION IS NOT NEEDED.

1. ADOPTEE / ADOPTER
 - a) a person who adopts a child of other parents as his or her own child
 - b) a person who is adopted
 - c) a person who is not one's biological parent but has married one's parent after one's birth.
2. DEPRIVATION OF PARENTAL AUTHORITY / LIMITATION OF PARENTAL AUTHORITY
 - a) suspending parental authority
 - b) restricting parental authority
 - c) taking away parental authority
3. COHABITANT / SPOUSE
 - a) a companion or friend
 - b) a marriage partner
 - c) a person who lives with another person in a sexual relationship, especially when not legally married
4. OF AGE / MINOR
 - a) a person under full legal age
 - b) an adult
 - c) an adolescent
5. SURROGACY / MATERNITY
 - a) the state of being a mother
 - b) the state of acting as a substitute of a mother
 - c) looking after or bringing up a child or children as a mother, in place of the natural or adoptive mother
6. NEXT OF KIN / SIBLING
 - a) a brother or sister
 - b) a person's closest relative or relatives
 - c) a person related by marriage

VI. FILL IN THE GAPS WITH AN ANTONYM OF THE WORD OR EXPRESSION IN BRACKETS.

1. Maintenance obligations are _____ (*included in*) the scope of this Regulation as these are already covered by Council Regulation No 44/2001.
2. In cases of _____ (*rightful*) removal or retention of a child, the return of the child should be obtained _____ (*with*) delay.
3. A court cannot _____ (*accept*) to return a child if the person who requested the return of the child has been given the opportunity to be heard.
4. The court in which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as _____ (*the former*) comes within the scope of this Regulation.

5. The focus in any custody case should always be on a solution that is in the child's "_____ (worst) interests".
6. Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is "_____ (absent) have jurisdiction to take measures of a "_____ (permanent) character for the protection of the person or property of the child.

VII. PROVIDE THE ANTONYMS OF THE WORDS UNDERLINED AND IN ITALICS BY ADDING NEGATIVE PREFIXES.

1. The courts of a Member State shall have jurisdiction in relation to parental responsibility.
2. The competent court or authority of a Member State of origin shall, at the request of the interested party, issue a certificate.
3. Where a communication is sent to a central authority without jurisdiction, the latter shall be responsible for forwarding it to the central authority with jurisdiction and informing the sender accordingly.
4. The request shall include all available information of relevance to its enforcement.
5. The Commission shall update this information and make it publicly available through the publication in the Official Journal of the European Union and any other appropriate means.
6. Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States.
7. This Regulation should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place.
8. To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined to exceptional situations.

VIII. COMPLETE THE SENTENCES. BE READY TO ADAPT THE SENTENCES TO THE APPROPRIATE VERB TENSE OF THE VERBS BY CHANGING THESE TO THE PRESENT, PAST, FUTURE OR PASSIVE FORMS.

***become, be, seek, begin, bear (x 2), bind, buy, come, bring,
choose, die, lay down, make, set out, go, lead, deal***

1. A court of a Member State in which recognition _____ of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.
2. A decision given in a Member State _____ by the 2007 Hague Protocol shall be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition.
3. In accordance with the principle of proportionality _____ in Article 1, this Regulation _____ beyond what is necessary to achieve those objectives.
4. It would also be appropriate to limit [...] the formal enforcement requirements likely to increase the costs _____ by the maintenance creditor.

5. One such procedural rule is a *lis pendens* rule, which _____ into play if the same case on the property consequences of registered partnerships is brought before different courts in different Member States.
6. The court _____ charges against the husband for custody infringement.
7. The European Union's wide variety of national legal systems _____ to a need to provide support and information through a network to authorities who _____ with cross-border cases.
8. The grandparents _____ sad about the loss of custody of their grandchildren.
9. The jurisdiction provided [...] for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce _____ final.
10. The law that _____ by the spouses must be consonant with the fundamental rights recognised by the Treaties [...]
11. The same protection should be afforded to any person who _____ succession property from a person indicated in the Certificate as being entitled to dispose of such property.
12. The translation costs arising from the application of paragraph 1 shall be _____ by the requesting State unless otherwise agreed by Central Authorities of the States concerned.
13. This regulation shall apply only to decisions given after the date of application of this Regulation following proceedings that _____ before that date.
14. To ensure uniform handling of a situation in which it is uncertain in what order two or more persons whose succession would be governed by different laws _____, this Regulation should _____ a rule providing that none of the deceased persons has any rights in the succession of the other or others.
15. While some Member States _____ provision for such *de facto* unions, they should be considered separately from registered partnerships.

IX. TURN THE FOLLOWING SENTENCES INTO THE PASSIVE VOICE.

1. We should improve cooperation between courts in family proceedings.
2. Member States cannot sufficiently achieve the objectives of the proposed action.
3. The EU may adopt measures in accordance with the principle of subsidiarity.
4. The requested court should execute the request in accordance with its national law.
5. The receiving court should not bear the fees paid to experts and interpreters.
6. Would the second witness have given the expected answer?
7. Did you tell your lawyer about custody?
8. The applicant must fill in the form.
9. The expert witness has not noticed the inconsistency.
10. The defence lawyer found that the questioning of the witness was more tedious than expected.
11. Will the defendant hire a new team of lawyers?
12. The parties have not agreed on the issue of maintenance yet.
13. Will the judge have handed down the judgment by Thursday?
14. When did the petitioner bring the proceedings?

X. REWRITE THE FOLLOWING CONDITIONAL SENTENCES SO THAT THEY NO LONGER CONTAIN THE WORD *IF*.

1. If you should file for divorce, do it in England.
2. If you were to choose the court for your divorce, where would you have your case heard?
3. If she had filed in England, her conduct during the marriage would have been irrelevant.
4. The media would not be against the proposal if it really worked.
5. Mrs. Jones wouldn't have claimed 20,000 euros if her husband's maintenance payments had not been cancelled.
6. Spouses may raise an application for divorce in the courts of the Member State of their last habitual residence if one of them still resides there.
7. There is a prorogation rule in Article 12 which stipulates that a court which is seised of divorce proceedings under the Regulation also has jurisdiction in matters of parental responsibility connected with the divorce if certain conditions are met.
8. If a person wishes to marry someone else after a divorce, it should only be necessary to produce the judgment itself to the authorities in the Member State where the new marriage is to take place to vouch the civil status of that person as having been divorced.
9. Although decisions on parental responsibility concern in most cases minors below the age of 18, persons below 18 years may be subject to emancipation under national law if they wish to marry.
10. This provision allows a court which is competent to deal with a matter of parental responsibility also to decide upon maintenance if that question is ancillary to the question of parental responsibility.

UNIT 2

DIVORCE: JURISDICTION, APPLICABLE LAW, RECOGNITION AND ENFORCEMENT

INTRODUCTION

Francisco de Paula PUIG BLANES
Senior Judge

Divorce is one of the basic topics included in Family Law. Due to this and the number of transnational couples, the EU has set common rules on jurisdiction, applicable law, recognition and enforcement of judgments and decisions on this topic that set clear rules on the courts that are to decide on divorce, legal separation and marriage annulment, which law that court will apply (based essentially on the links of the couple, not the court, so that the possible different options of courts having jurisdiction on divorce does not affect the outcome of the decision) and the rules to enforce a judgment in another Member State (based on the rule of automatic recognition, which means that a decision taken by a court of another EU Member State is treated in the same way as a national judgment).

The rules that will be analysed here cover only the topic of divorce and not other possible content that the judgment could have, such as parental responsibility or maintenance, as these topics have their own rules on jurisdiction, applicable law, recognition and enforcement.

The EU rules on divorce (in the areas mentioned above) are the following:

- Jurisdiction: 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 (Brussels IIa Regulation).
This Regulation has been replaced by Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels IIa recast). The new Regulation has already entered into force, even though it shall apply from 1 August 2022.
- Applicable law: Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III).
- Recognition and enforcement: Council Regulation (EC) Regulation 2201/2003 (Brussels IIa) and, from 1 August 2022, Council Regulation (EU) 2019/1111.

1. JURISDICTION

The rules on jurisdiction are set by Council Regulation (EC) No 2201/2003 (Brussels IIa), which is applicable in 26 of the Member States (Denmark is excluded from the scope of the Regulation – Art 2.3). This means that any time the Regulation uses the term “Member State”, it refers to any of the above-mentioned 26 States.

The Regulation has been applied as from 1 March 2005 so that it applies in its entirety to legal proceedings instituted after 1 March 2005 – as from 1 January 2007 as regards Bulgaria and Romania and as from 1 July 2013 as regards Croatia –. Until then the applicable instrument was Council Regulation (EC) No 1347/2000, “Brussels II”.

As far as the United Kingdom is concerned, it has ceased to be a EU Member State since 1 January 2020, even though Regulation 2201/2003 was applicable to it. Based on the Withdrawal Agreement (Art 67), jurisdiction rules included in Regulation 2201/2003 continue to be applicable in the United Kingdom (thus, in this sense it continues to be considered as a Member State) during the transition period that ends on 31 December 2020.

For procedures that are to start since 1 August 2022, the rules on jurisdiction to apply will be those set by Regulation 2019/1111 (they are also to be included in this analysis paying attention to the differences between them and those of Regulation 2001/2003). Denmark has also not taken part in the adoption of this regulation, and therefore the concept of Member State included in the Regulation refers to the other 26 Member States.

The notion of ‘court’ is open in both Regulations as it covers all the authorities in the Member States with jurisdiction in the matters falling within the scope of them (as an example, it includes notaries as in some Member States and in specific cases they are responsible for handling some divorces).

After this introduction of the scope of Regulations 2003/2001 and 2019/1111, the rules on jurisdiction set by them will be explained.

1.1. General Jurisdiction

Article 3 of Regulation 2201/2003 sets the jurisdiction rules that determine in which Member State the courts can handle a divorce, legal separation and marriage annulment case, but not the court which is competent within that Member State, as this question is left to the domestic law of each Member State (this is a different regime from that set by Regulation 4/2009 on maintenance, as the rule sets the competent court not only referring it to a Member state but to a particular location within each Member State).

These rules are to be applied also to marriage annulment brought by a third party even though the reference in the rules to spouses only includes them and not this third party (CJEU C-294/15 *Edyta Mikołajczyk*, 13 October 2016).

The rules on jurisdiction are alternative (there is no hierarchy, and so there is no order of precedence), as the term employed when setting the rules is “or” and not “failing that” (this was specially mentioned in CJEU Case C-168/08 *Hadadi v Hadadi*, 16 July 2009). This means that due to the links of the couple with different Member States, the courts of more than one Member State could have jurisdiction to handle the divorce, legal separation or marriage annulment (in the case where more than one court is handling a case of the same couple, the determination of which court has jurisdiction is set by the rules on *lis pendens* and dependent actions which will be analysed later).

The courts having jurisdiction on divorce (and also on legal separation and marriage annulment) are those of the country where:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom (for procedures started before the 31 December 2020) and Ireland, has his or her 'domicile' there;
- country of the nationality of both spouses or, in the case of the United Kingdom (for procedures started before the 31 December 2020) and Ireland, of the 'domicile' of both spouses.

The fact that the couple seeking dissolution of their marriage have a minor child is irrelevant for the purposes of determining the court having jurisdiction to rule on the application for divorce (CJEU C-759/18, 3 October 2019).

Regulation 2019/1111 keeps these rules excluding only the reference to the 'domicile'.

1.2. Counterclaim

In cases where there is a counterclaim (an example can be that of a case when the applicant files for legal separation and the respondent files a counterclaim requesting divorce, in the countries where this option exists), the first court has jurisdiction also for the counterclaim if it (as is the case mentioned above) is within the scope of the Regulation (Art 4).

The same rule is contained in Article 4 of Regulation 2019/1111.

1.3. Conversion of legal separation into divorce

If the law of the Member State so provides, the court of a Member State that has given a decision granting a legal separation shall also have jurisdiction to convert that legal separation to a divorce (Art 5 Regulation 2201/2003 and Art 5 Regulation 2019/1111).

1.4. Exclusive nature of the rules on jurisdiction (examination as to jurisdiction)

Jurisdiction rules are exclusive in the sense that a spouse who is habitually resident in a Member State or who is a national of a Member State (or who has his or her 'domicile' in the United Kingdom - for procedures started before the 31 December 2020 - or Ireland) may only be sued in another Member State on the basis of the rules set in Articles 3 to 5 of Regulation 2001/2003. This means that in this situation (where the rules mentioned above set the jurisdiction of a Member state), no national rules on international jurisdiction can be applicable to set the jurisdiction of a court.

Due to the nature of the rules, the court must examine international jurisdiction on its own motion

so that (Art 17 Regulation 2203/2001), where a court of a Member State is seised of an application on divorce in respect of which it has no jurisdiction under the rules set by the Regulation and a court of another Member State does have jurisdiction, it must of its own motion declare that it has no jurisdiction. The case is not transferred to the court of the other Member State, the parties being the ones that must start the procedure before that other court. Only in cases of parental responsibility and due to the superior interest of the child, there is a need to inform the central authority as set by CJEU Case C-523/07 A, 2 April 2009; this is not the situation in a divorce case where there is no superior interest of a minor to protect, unless both topics are included in the application. In these situations, the information to be provided to the central authority is also to be referred to divorce as it is the basis of the need to decide on parental responsibility.

Regulation 2019/1111 includes both rules in Arts 6.2 and 18.

1.5. Residual jurisdiction

This rule (Art 7 Regulation 2001/2003) is set for situations where no court of a Member State has jurisdiction based on the rules set by Articles 3, 4 and 5. In this case, courts of Member States can refer to their national rules on international jurisdiction to set their jurisdiction.

The same rule is included in Art 6 of Regulation 2019/1111.

1.6. *Lis pendens* and dependent actions

This rule (Art 19 Regulation 2001/2003) is foreseen both for the situation where two courts of different member states have been faced with the same request between the same parties (e.g. divorce) which is a situation of *lis pendens*; or where the same parties have submitted to courts of different Member States different requests but related (e.g. in one court of a member State divorce is requested and in another court in another Member State the request is for marriage annulment).

The rule included in Article 19 of Regulation 2201/2009 is the same for both situations, namely, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court. In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

In relation to the situation of the United Kingdom, a special question needs to be pointed out, that of "*lis pendens*" and "dependent actions", as the Withdrawal Agreement (Art 67) specifies that EU rules on jurisdiction also apply to "proceedings or actions that are related to such legal proceedings" even if such related proceedings or actions are instituted after the end of the transition period. This implies that EU rules on "*lis pendens*" and "dependent actions" are to be applied also if the cases are brought before the courts of a Member State and the United Kingdom before and after the end of the transition period (31.12.2020) respectively (or vice versa). For procedures started after that date, national rules on international *lis pendens* are the ones to be applied.

The same rule is included in Article 20 of Regulation 2019/1111.

1.7. Provisional, including protective measures

In urgent cases, Article 20 of Regulation 2201/2003 states that its provisions shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under the Regulation, the court of another Member State has jurisdiction as to the substance of the matter. This decision and the measures taken (not common in divorce procedures as such as they usually refer to parental responsibility) are provisional as they cease to apply when the court of the Member State having jurisdiction under the Regulation as to the substance of the matter has taken the measures it considers appropriate.

The same rule is included in Article 15 of Regulation 2019/1111, the difference with Regulation 2201/2003 being that of its location, since in Regulation 2001/2003 it is included in the common provisions (which means it is also applicable in divorce cases), where in Regulation 2019/1111 it is included in the section devoted to parental responsibility, an option which is considered as logical: as has been mentioned above, these measures refer to questions of parental responsibility and not divorce.

2. APPLICABLE LAW

Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III) is the one that sets rules on applicable law to divorce and legal separation.

Due to the nature of the topic and the differences in regulation between Member States, it was drafted under the rules on enhanced cooperation, 14 being the initial Member States that took part into it. These Member States were Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. For them Regulation 1259/2010 became applicable on 21 June 2012.

On 21 November 2012, the Commission adopted Decision 2012/714/EU confirming the participation of Lithuania in enhanced cooperation in the area of the law applicable to divorce and legal separation. That Decision foresees that Regulation (EU) No 1259/2010 applies to Lithuania from 22 May 2014.

On 27 January 2014, the Commission adopted Decision 2014/39/EU confirming the participation of Greece in enhanced cooperation in the area of the law applicable to divorce and legal separation. That Decision foresees that Regulation (EU) No 1259/2010 applies to Greece from 29 July 2015.

On 10 August 2016, the Commission adopted Decision (EU) No 2016/1366 confirming the participation of Estonia in enhanced cooperation in the area of the law applicable to divorce and legal separation. That Decision foresees that Regulation (EU) No 1259/2010 applies to Estonia from 11 February 2018.

The Regulation is only applicable to private international law conflicts and not internal conflicts of laws (Art 16) unless so decided by the State concerned.

2.1. Universal nature

Regulation 1259/2010 (as most instruments on applicable law) sets the rule of universal application (Art 4), which means that the law designated can be that of a third State. Therefore, in the implementation of this rule the court shall need to apply that law to divorce/legal separation even though it is that of a State not bound by the Regulation (even a non-European State).

2.2. Exclusion of *renvoi*

Regulation 1259/2010 in Art 11 excludes *renvoi*, and thus when it provides for the application of the law of a State it includes all rules in force in that State other than rules of private international law.

2.3. Public policy

Regulation 1259/2010 in Art 12 foresees that the application of a provision of the law designated by it is to be done, unless that application is manifestly incompatible with the public policy of the forum.

2.4. Differences in national law

Due to the different rules on marriage and divorce/legal separation in the States that take part in the Regulation, it states in Art 13 that there is no obligation of courts of a participating Member State to pronounce a divorce by virtue of the application of the Regulation if its national law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings.

Besides that, and as in some States there may be different legal systems (either based on the territorial unit or on categories of persons), Articles 14-15 provide the rules to solve this situation.

In relation to different legal territorial regimes within a State, to set out which rule is to be applicable among the different of that State, the Regulation sets directly the rules for it that enable the identification of the territorial rule to apply (there is no need to apply the internal rules for setting the applicable law). For this purpose, it provides that the references contained in the Regulation to the law of a State refers to the territorial unit within that State, the ones on habitual residence in that State to habitual residence in that territorial unit and those on nationality of that State to that of the territorial unit.

If the different internal rules refer to persons, Regulation 1259/2010 refers to those in force in that State to set out the specific applicable law. In the absence of such rules, the Regulation closes the system by stating that the applicable rules are those with which the spouse or spouses has or have the closest connection.

The Regulation does not apply to internal conflicts of laws even though nothing forbids it if a State considers so.

2.5. Rules on applicable law

The first rule to apply is that of choice of applicable law (Arts 5-7). This choice can be done at any moment and until the court is seised unless the possibility of a later choice of applicable law is foreseen by the law of the forum. The choice is to be done in writing, dated and signed (electronic means accepted). If the law of the participating Member State in which the two spouses

have their habitual residence at the time the agreement is concluded lays down additional formal requirements for this type of agreement, those requirements shall apply. If each spouse resides in a different member State and both have these requirements the agreement is valid if it satisfies the requirements of either of those laws. If only one resides in a Member State, the formal requirements of that Member State are to be fulfilled. The existence and validity of an agreement on choice of law or of any term thereof, is determined by the law which would govern it under the Regulation. Nevertheless, a spouse, in order to establish that he/she did not consent, may rely upon the law of the country in which he/she has his/her habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified.

The choice cannot be made of any law, but only to one which has a connection with the couple. Due to this, the law that can be chosen is to be one of these:

- Law of Habitual residence of both spouses
- Law of last habitual residence in so far as one of them still resides there at the time the agreement is concluded
- Law of nationality of either spouse at the time the agreement
- Law of the forum.

If the spouses have not chosen the applicable law to their divorce/legal separation, Regulation 1259/2010 specifies it in a “cascade” system that implies that only when the first rule cannot be applied, it is possible to analyse the second (the same with the following ones).

Thus, in case there is no agreement between the parties on the applicable law to the divorce, it is ruled by the law of (Art 8):

- habitual residence of the spouses at the time the court is seised; or, failing that,
- last habitual residence of spouses provided that the period of residence did not end more than 1 year before the court was seised, in, so far as one of the spouses still resides in that State at the time the court is seised; or, failing that,
- nationality of both spouses are nationals at the time the court is seised; or, failing that, the court seised.

The Regulation also contains a rule in Article 9 for the situation where separation is converted into divorce, the rule being that the applicable law to separation also applies to divorce unless the parties have agreed on the applicable law to divorce based on the rule analysed before. If the law applied to the legal separation does not provide for the conversion of legal separation into divorce, and there is no agreement on the applicable law among the parties, the law applicable to divorce is to be the one mentioned above for the case of lack of choice by the parties.

Finally, the Regulation foresees in Article 10 the application of the law of the forum where the law applicable pursuant to the above-mentioned Articles 5 or 8 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex. This rule (as indicated in CJEU C-249/19, 16 July 2020) applies only where the foreign law applicable makes no provision for divorce in any form (the situation analysed in this case was that of a situation where the court having jurisdiction considered that the foreign law applicable pursuant to the provisions of Regulation No 1259/2010 permitted an application for divorce only if that divorce had been preceded by a legal separation of three years, whereas the law of the forum did not lay down any procedural rules in relation to legal separation).

3. RECOGNITION AND ENFORCEMENT

Council Regulation (EC) No 2201/2003 of 27 November 2003 (Brussels IIa) is the one that includes the rules on this topic, its territorial and temporal scope being the one mentioned above in the analysis done on jurisdiction.

The Regulation contains transitional rules in Article 64 that state that the rules on recognition and enforcement of the Regulation apply, in relation to legal proceedings instituted before 1 March 2005, to three categories of judgments:

- (a) Judgments given on and after 1 March 2005 in proceedings instituted before that date but after the date of entry into force of Council Regulation (EC) No 1347/2000 – Brussels II (1 March 2001) if jurisdiction was founded on rules which accorded with those provided for either in Chapter II or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.
- (b) Judgments given before 1 March 2005 in proceedings instituted after the date of entry into force of the Brussels II Regulation (1 March 2001) in cases falling under the scope of the Brussels II Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings (this last mention is included as the Brussels II Regulation only ruled on jurisdiction, recognition and enforcement on parental responsibility linked to a divorce or legal separation of a married couple as parental responsibility of children of unmarried parents was out of the scope of that Regulation).
- (c) Judgments given before 1 March 2005 but after the entry into force of the Brussels II Regulation (1 March 2001) in proceedings instituted before the date of entry into force of the Brussels II Regulation, provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings and that jurisdiction was founded on rules which accorded with those provided for either in Chapter II of this Regulation or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

In relation to the situation of the United Kingdom, it is no longer an EU Member State since 1 January 2020, even though Regulation 2201/2003 was applicable to it. Based on the Withdrawal Agreement (Art 67), enforcement rules included in Regulation 2201/2003 continue to be applicable in the United Kingdom (so that in this sense continues to be considered as a Member State) during the transition period that ends on 31 December 2020. In relation to the situation since 1 January 2021, Regulation 2201/2003 is to apply to the recognition and enforcement of judgments given in legal proceedings instituted before the end that date (31 December 2020), and to documents formally drawn up or registered as authentic instruments, and agreements concluded before that date (31 December 2020). For judgments given in legal proceedings instituted after the end of the transition period, and to documents formally drawn up or registered as authentic instruments, and agreements concluded after the end of the transition period, the United Kingdom is to be considered in this field a Third State and thus all judgments (both coming from a EU Member State to be enforced in the UK and UK divorce judgments to be enforced in the EU) will require an “exequatur” procedure before their enforcement – unless otherwise provided by a bilateral or multilateral agreement on the topic to which both the EU and the other country are parties).

Regulation 2019/1111 is to be applicable since 1 August 2022. This means (according to Art 100) that it shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022. Regulation (EC) No 2201/2003 shall continue to be applied to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022 and which fall within the scope of Regulation 2201/2003.

3.1. Rules on recognition and enforcement of judgments

The principle set by Regulation (EC) No 2201/2003 is that of automatic recognition of judgments that grant divorce, legal separation or marriage annulment (Art 21.1).

Recognition is the procedure to apply on decisions on separation, divorce or marriage annulment as the decision on these topics does not include (in principle) any need to enforce any part of its content.

The Regulation foresees three kinds of recognition: civil status records recognition, incidental question on recognition and a request for a general recognition or non-recognition declaration.

The last two are civil procedures themselves (either on their own as it is the case of the general recognition or non-recognition procedure or within a main procedure – incidental recognition), the former (civil status recognition) being only a procedure for the judgment to be included in the civil status record.

This civil status records recognition is very quick as the Regulation provides that no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State. This means that with the certificate of Annex I of the Regulation (Art 39) and a copy of the judgment, the change of the civil status record can be made.

Even though the Regulation is based on the principle of automatic recognition, it sets (Art 22) grounds for non-recognition. These are:

- That recognition would be manifestly contrary to the public policy of the Member State of enforcement;
- Where the respondent does not appear if the initiating documents were not served in time for the respondent to arrange for a defence unless the respondent has clearly accepted the judgment;
- If the judgment is irreconcilable with a judgment between the same parties in the Member State where recognition is sought; or
- If it is irreconcilable with a judgment between the same parties in another State which is capable of being recognized in the Member State where recognition is sought.

The court where recognition is sought may not review the basis of jurisdiction of the court of the Member State of origin which issued the judgment (Art 24, rule specifically pointed out in CJEU C-386/17 *Stefano Liberato*, 16 January 2019). This enforcement court cannot also apply the test of public policy to the jurisdiction rules set out in Articles 3 to 7 of the Regulation (Art 24) or refuse to recognise the judgment because the law of the Member State of recognition would not have allowed a judgment in matrimonial matters on the same facts (Art 25) or in any event review the judgment as to its substance (Art 26).

Finally, Articles 49-52 set common rules on costs, legal aid (it is provided that an applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses is entitled, in the procedures for recognition of enforcement to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement), securities bonds or deposits (no security, bond or deposit, required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the grounds that he or she is not habitually resident in the Member State in which enforcement is sought; or that he or she is either a foreign national or – United Kingdom until 31 December 2020 or Ireland – his or her 'domicile' in either of those Member States), and legalisation or other similar formalities (not required).

Regulation 2019/1111 sets a similar system (Arts 30-33) with the same grounds for non-recognition mentioned above (Art 38) and the same common rules (Arts 73-75 and 90).

3.2. Rules on recognition and enforcement of authentic instruments.

Article 46 of Regulation (EC) No 2201/2003 states that a document drawn up or registered in a Member State as an authentic instrument which is enforceable there, or an agreement which has been concluded and is enforceable in the Member State in which it was concluded, shall be recognised and declared enforceable in another Member State like a judgment.

Regulation 2019/1111 provides for the same rule in its Art 65.1.

LANGUAGE EXERCISES

A. READING COMPREHENSION

I. PRE-READING EXERCISE. MATCH THE TWO COLUMNS TO FORM COLLOCATIONS, I.E. COMBINATIONS OF TWO WORDS (IN THIS CASE, ADJECTIVE + NOUN) THAT USUALLY APPEAR TOGETHER.

- | | |
|----------------|-------------------|
| 1. common | a) assets |
| 2. court | b) children |
| 3. family | c) home |
| 4. former | d) property |
| 5. matrimonial | e) responsibility |
| 6. minor | f) settlement |
| 7. parental | g) spouse |
-

II. READ THE TEXT BELOW ON THE LEGAL CONSEQUENCES OF A DIVORCE IN HUNGARY AND DECIDE WHETHER THE SENTENCES GIVEN BELOW ARE TRUE (T) OR FALSE (F).

1. To obtain divorce from the court the spouses have to agree on the division of common matrimonial property.
2. The court *ex officio* deprives the former wife of her former husband's name if she was found guilty of committing an intentional criminal offence.
3. The parent who does not hold the right of custody provides maintenance mainly in cash.
4. The right of access means that the absent parent has the right to maintain personal relations and direct contact with the child any time s/he wants to.
5. Even if the right of custody is granted to one parent, both parents always decide on the child's future.

The Legal Consequences of a Divorce in Hungary

https://e-justice.europa.eu/content_divorce-45-hu-en.do?member=1#toc_4

The marriage ends with the divorce of the spouses. When divorce is obtained, the right of custody and maintenance of the common child, contact between the parent and the child, alimony for any of the spouses, use of the family home and, in the case of joint parental responsibility, the residence of the child is regulated by court settlement if the parties can come to an agreement – meeting the statutory requirements – or, in the absence of an agreement between the spouses, by a court judgment. The spouses do not need to agree on the division of common matrimonial property to obtain divorce from the court.

The personal relations between the spouses (e.g. the surname)

Following the divorce or annulment of the marriage the former spouses continue to use the same names they did during their marriage. If they have a different wish, they may make it known to the superintendent registrar following the divorce or annulment of the marriage. The former wife, however, may never use the name of her former husband with the suffix indicating her married status if she did not use that name during her marriage. At the request of the former husband, the court may prohibit his former wife to use his name in a form based on which he may be identified, if the wife was sentenced to imprisonment for an intentional criminal offence. If the former wife remarries, she may no longer use the name of her former husband with a suffix indicating her married status. She may not regain this right even if she divorces again.

The division of property of the spouses

In the case of divorce, the former spouses no longer hold a joint estate and either of them may apply for the division of matrimonial property. They may request compensation for investments from common assets into their separate assets or investments from their separate assets into common assets as well as for management and maintenance costs. No compensation may be sought for expenses if the spouses waived their rights to the funds concerned. Compensation for separate assets used or completely used up under the matrimonial relationship may only be granted in exceptional and duly justified cases. The share of former spouses from the joint estate they hold at the time of the divorce must be allocated to them in kind, if possible. Separate assets held at the time of the divorce must also be allocated in kind. If, for any reason, this is not possible or would result in a significant loss in the value of the assets, in the event of a dispute, the method of division will be specified by the court. No compensation may be sought for common and separate assets missing, if the spouses hold no common matrimonial property at the time of their divorce and the party in debt has no separate assets either.

If common matrimonial property is divided on the basis of a contract concluded between the spouses, such contract is considered valid only if it is set down in writing in a public instrument or private instrument countersigned by a lawyer. This provision does not apply to the division of moveable property forming part of the common property of the spouses if division took place by enforcement.

If the spouses did not enter into a contract on the division of common assets or the contract concluded does not regulate all the claims that may arise from the divorce, the division of common matrimonial property and the settlement of claims may be requested by the court. The court must ensure that neither of the spouses are granted undue financial benefit when settling claims to property.

The minor children of the spouses

Parents are obliged to share with their minor children the resources available for the maintenance of both of them, even at the expense of their own resources. This rule does not apply if the child can cover his or her reasonable needs from a salary earned by taking a job or from the income on the child's assets, or if the child has a direct relative who may be obliged to pay maintenance. The parent holding the right of custody provides for maintenance in kind while the absent parent provides it primarily in cash (maintenance allowance).

If a maintenance allowance is granted by order of the court, the amount payable as maintenance will be fixed. The court may provide in its judgment that the amount of the allowance payable must be adjusted each year automatically in accordance with the consumer price index published annually by the Hungarian Central Statistical Office from 1 January of the following year.

As far as practicable, matters of exercising parental responsibility over the child must be decided by common agreement between the parents.

If the parents fail to come to an agreement in these matters, the court will grant the rights of custody to the parent who, in the court's assessment, can better promote the physical, mental and moral development of the child. If the placement of the child with any of the parents would put his or her best interests at risk, the court may grant the right of custody to a third person, provided that such person seeks to exercise the right of custody himself or herself.

The child has the right to maintain direct personal contact with the absent parent. It is the right and the duty of the absent parent to maintain personal relations and direct contact with the child on a regular basis (right of access). The parent or other person holding the right of custody must not infringe upon the right of access.

The parent holding the right of custody and the absent parent must cooperate with each other – respecting the family life and right to peace of the other party – to ensure the balanced development of the child. The parent holding the right of custody must provide information to the absent parent on the development, health and studies of the child on a regular basis and may not withhold such information if requested by the absent parent.

Parents living separately exercise their rights jointly with respect to essential questions concerning the child's future, even if the right of custody is granted to one of them based on their common agreement or the decision by the court, except if the parental responsibility of the absent parent is limited or terminated by the court. Essential questions concerning the child's future involve the use or change of name of the minor child, his or her place of residence other than the residence shared with the parent with custody, his or her place of stay abroad for permanent residence or establishment, as well as the nationality, education and career of the child.

The obligation to pay maintenance to the other spouse

A spouse may demand alimony from the other spouse following legal separation or, in the case of divorce, a former spouse may demand such alimony from the other former spouse if in need of it through no fault of his or her own, unless the (former) spouse requesting alimony did not become unworthy of it due to his or her conduct during the marriage. The payment of alimony should in no way endanger the livelihood of the former spouse obliged to pay alimony, and that of the person(s) whom the latter must maintain jointly with the former spouse requiring alimony. The obligation to pay alimony may have a limited term if it can be assumed that the party requesting alimony will no longer be in need after the expiry of such term.

If the spouse or former spouse requests alimony on account of the deterioration of his or her situation more than five years after legal separation, such request may be granted only on equitable grounds and in exceptional cases. If the spouses lived together as a couple for less than a year and have no common children from the marriage, the former spouse in need is entitled to alimony only for a period equivalent to the duration of their common life. On equitable grounds and in exceptional cases the court may order the payment of alimony for a longer period.

III. READ THE TEXT AGAIN, ESPECIALLY THE PARAGRAPH ON THE DIVISION OF PROPERTY OF THE SPOUSES AND FIND THE WORDS OR EXPRESSIONS FOR THE FOLLOWING DEFINITIONS.

1. fairly large (adj.):
2. in goods or produce rather than in money:
3. to give up a possession, claim, or right (v.):
4. to sign (a document already signed by another) (v.):
5. unjust, improper, or illegal (adj.):

IV. COMPLETE THE SENTENCES WITH THE APPROPRIATE PREPOSITIONS.

1. if the parties can come _____ an agreement ...
2. ... the former spouse may apply _____ the division of matrimonial property ...
3. ... if the spouses did not enter _____ a contract on the division of common assets ...
4. Separate assets held at the time of the divorce must also be allocated _____ kind.
5. If a maintenance allowance is granted _____ order of the court ...
6. A spouse may demand alimony _____ the other spouse following legal separation.

B. FURTHER LANGUAGE PRACTICE.

MATCH THE WORDS TO THE DEFINITIONS

alimony

defendant

marital property

premarital/prenuptial agreement

child support

dissolution

non-marital property

settlement conference

custody

domestic violence

claimant

visitation

1. A meeting at which the parties and their lawyers attempt to settle the case before trial.
2. An agreement entered into before marriage that sets forth each party's rights and responsibilities should the marriage terminate by death or divorce.
3. Another word for divorce, which is the legal termination of a marriage relationship.
4. Financial payments made to help support a spouse or former spouse during separation or following divorce. Also called spousal support or spousal maintenance.
5. Generally, all property acquired during the marriage.
6. Generally, property owned by either spouse prior to marriage or acquired by them individually, such as by gift or inheritance, during the marriage.
7. Having rights to your child. It can be either legal, which means that you have the right to make important decisions about your child's welfare, or physical, which means that the child lives with and is raised by you.
8. Money that a non-custodial parent pays to the custodial parent for their child(ren)'s support.

9. Physical abuse or threats of abuse occurring between members of the same household.
10. The person against whom legal papers are filed, also sometimes referred to as the respondent.
11. The person who initiates legal proceedings, often called the petitioner in family law matters.
12. The time that a non-custodial parent spends with his or her child(ren).

II. COMPLETE THE FOLLOWING SENTENCES WITH THE APPROPRIATE PREPOSITIONS.

as, between, by, for, in, into, of, on, to, with, within, without

1. As regards judgments _____ divorce, legal separation or marriage annulment, this Regulation should apply only _____ the dissolution of matrimonial ties and should not deal _____ issues such as the grounds _____ divorce, property consequences _____ the marriage or any other ancillary measures.
2. Jurisdiction should lie in the first place _____ the Member State of the child's habitual residence, except _____ certain cases of a change in the child's residence pursuant _____ an agreement _____ the holders of parental responsibility.
3. The court _____ which proceedings are pending _____ the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as the latter comes _____ the scope of this Regulation.
4. (...) a court of a Member State that has given a judgment _____ a legal separation shall also have jurisdiction _____ converting that judgment _____ a divorce, if the law of that Member State so provides.
5. A judgment relating _____ a divorce, legal separation or marriage annulment shall not be recognised where it was given in default _____ appearance, if the respondent was not served _____ the document which instituted the proceedings or _____ an equivalent document in sufficient time and _____ such a way as to enable the respondent to arrange _____ his or her defence.
6. The applicant shall bear any costs of translation prior _____ the transmission _____ the document, without prejudice _____ any possible subsequent decision by the court or competent authority.
7. A Central Authority may require that the application be accompanied _____ a written authorisation empowering it to act _____ behalf _____ the applicant, or to designate a representative so to act.

UNIT 3

PARENTAL RESPONSIBILITY: JURISDICTION, APPLICABLE LAW, RECOGNITION AND ENFORCEMENT

INTRODUCTION

Aleš Galič

1. MATERIAL SCOPE OF APPLICATION

The Brussels IIa Regulation sets out rules of jurisdiction and recognition of enforcement of judgments relating to the attribution, exercise, delegation, restriction or termination of parental responsibility. The term 'parental responsibility' means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect (Article 2).

Most importantly, the term includes (a) rights of custody and rights of access. The term 'rights of custody' includes rights and duties relating to the care of the person of a child (exercised either solely or jointly), and in particular the right to determine the child's place of residence, whereas the term 'rights of access' (also: 'visitation rights' or 'contact rights') includes in particular the right to take a child to a place other than his or her habitual residence for a limited period of time. Furthermore, the term 'parental responsibility' includes in particular, but not exclusively (b) guardianship, curatorship and similar institutions; (c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; (d) the placement of the child in a foster family or in institutional care and (e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property (Article 1.2)

Conversely, the Regulation does not apply to (a) the establishment or contesting of a parent-child relationship; (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption; (c) the name and forenames of the child; (d) emancipation; (e) maintenance obligations; (f) trusts or succession as well as (g) measures taken as a result of criminal offences committed by children (Article 1.3).

The above concepts must be interpreted *autonomously*. It is irrelevant whether, for example, placement of a child in institutional care is considered a measure of public law under national law and is decided by an administrative authority (see e.g. CJEU judgment C-435/06, C, 27 November

2007). Numerous controversial issues arise as to the characterization of the above concepts and the delimitation between the scope of application of the Brussels IIa Regulation and other EU instruments – such as the Brussels I Regulation, the Maintenance Regulation and the EU Regulation on Successions. For example, as explained in Recital 9, as regards the property of the child, this Regulation should apply only to measures for the protection of the child, for instance in cases where the parents are in dispute as regards the administration of the child's property. Measures relating to the child's property which do not concern the protection of the child (e.g. the question whether the contract, concluded on behalf of the child by one parent is valid in spite of the lack of explicit consent of the other parent) should continue to be governed by the Brussels I Regulation. Likewise, concerning the distinction between parental responsibility and succession, the court's approval of an agreement for the sharing-out of an estate concluded by a guardian *ad litem* on behalf of minor children constitutes a measure relating to the exercise of parental responsibility and not a measure relating to succession (and therefore, only the court in the country of habitual residence of the child and not the court in the country, where probate proceedings are pending), has jurisdiction to give such approval (CJEU C-404/14, *Marie Matoušková*, 6 October 2015). In the CJEU's view, the appointment of a guardian for the minor children and the review of the exercise of such guardian's activity are so closely connected that it would not be appropriate to apply different jurisdictional rules, which would vary according to the subject-matter of the relevant legal act. The need to obtain approval from the court dealing with guardianship matters is a direct consequence of the status and capacity of the minor children and constitutes a protective measure for the child relating to the administration, conservation or disposal of the child's property in the exercise of parental responsibility within the meaning of Article 1(1)(b) and 2(e) of Regulation 2201/2003. In a similar vein and relating to the distinction between measures of public law and matters of parental responsibility, the CJEU held that an action in which one parent asks the court (in the country of the child's habitual residence) to remedy the lack of agreement of the other parent to request that a passport is issued in the child's name (so that the child could travel abroad) is within the material scope of the Brussels IIa Regulation, even though the decision in that action will have to be taken into account by the authorities of another Member State of which the child is a national in the administrative procedure for the issue of that passport (CJEU C-215/15, *Ivanova Gogova*, 21 October 2015).

On the one hand, the term "child" is not defined in the Regulation (unlike e.g. in the 1996 Hague Convention on Child Protection, which applies to children up to the age of 18 or in the 1980 Hague Child Abduction Convention, which only applies to children under 16 years of age). The issue of "emancipation" is left to the national law. On the other hand, the Regulation specifies that the concept of the "holder of parental responsibility" shall cover any person having parental responsibility over a child. Who has such parental responsibility is again a matter for the national law. It is in any case not excluded that other persons with whom it is important for the child to maintain a personal relationship, among others, that child's grandparents, whether or not they are holders of parental responsibility (e.g. grandparents), are holders of the 'rights of access' (CJEU C-335/17, *Valcheva*, 31 May 2018). This is in line with the case law of the ECtHR, according to which the ties between grandparents and their grandchildren fell within the scope of family ties for the purposes of the right to family life under Article 8 ECHR.

2. HABITUAL RESIDENCE OF THE CHILD AS THE MAIN BASIS FOR JURISDICTION

According to Recital 12 of the Brussels IIa Regulation, the grounds of jurisdiction in matters of parental responsibility established therein are shaped in the light of the best interests of the child, in particular on the criterion of proximity. In addition, according to Recital 33 the Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter. In line with these overriding principles, Article 8, Para 1 of the Brussels IIa Regulation determines that the courts of the Member State of the child's habitual residence shall have jurisdiction (Article 8.1). Thus, the key criterion for regulating jurisdiction is the habitual residence of the child.

The Regulation does not define the concept of 'habitual residence'. According to the CJEU, habitual residence is an autonomous concept of EU law. It is accepted that "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 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" (CJEU, C-523/07, A, 2 April 2009). The use of the adjective 'habitual' indicates that the residence must have a certain stability or regularity (CJEU C-393/18 PPU, *UD v XB*, 17 October 2018) and that the presence is not in any way temporary or intermittent (CJEU, C-111/17 PPU, *OL v PQ*, 8 June 2017). In addition, the relevant factors vary according to the age of the child concerned (CJEU C-497/10 PPU, *Mercredi*, 22 December 2010). This in turn has given rise to complex issues as to how to determine the habitual residence in cases where the child in question is an infant or a newborn. The environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of, and that an infant necessarily shares the social and family environment of that person or those persons. Consequently, where an infant is in fact taken care of by her mother, in a Member State other than that where the father habitually resides, the factors to be taken into consideration include, first, the duration, regularity, conditions and reasons for the mother's stay in the territory of the former Member State and, second, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State (CJEU C-111/17 PPU, *OL v PQ*, 8 June 2017). The intention of the parents to settle permanently with the child in a Member State can also be taken into account, where that intention is manifested by certain tangible steps such as the purchase or lease of a residence in the host Member State (see, to that effect, CJEU C-523/07, A, 2 April 2009). Thus, the intention of the parents cannot as a general rule by itself be crucial to the determination of the habitual residence of a child, but constitutes an 'indicator' capable of complementing a body of other consistent evidence (CJEU C-111/17 PPU, *OL v PQ*, 8 June 2017). In any case, a child cannot have a habitual residence in a country, where he or she has never been physically present. This is relevant for factual situations where a child is born, as agreed by her parents, in a Member State other than that where they were habitually resident, whereafter the mother, in breach of such agreement, refuses to return with the child to the Member State where the couple had been habitually resident. Such situations do not amount to a child abduction as the child has never had habitual residence in that country (CJEU C-111/17 PPU, *OL v PQ*, 8 June 2017 and CJEU C-393/18 PPU, *UD v XB*, 17 October 2018).

It is generally accepted that the child can only have one habitual residence. On the other hand, it is possible that the child has no habitual residence or that the habitual residence of the child cannot be established (CJEU C-497/10 PPU, *Mercredi*, 22 December 2010). Relevant is the child's habitual residence at the time when proceedings are brought. In line with the rule of *perpetuatio fori* jurisdiction does not shift if the child acquires habitual residence in another member state during the proceedings.

3. ADDITIONAL GROUNDS FOR JURISDICTION

There is a limited number of exceptions to the general rule that the courts of the member state of the child's habitual residence have jurisdiction over matters of parental responsibility.

The most important exception, namely that in cases of child abduction, the courts of the member state where the child was habitually resident immediately before the unlawful removal or retention (Arts. 10 and 11), retain jurisdiction, shall be dealt with separately in the following chapter.

Article 9 relates to cases of a lawful relocation of a child, i.e. where the child, along with his or her primary care provider, lawfully moves to another member state. The rule provides for a short period of three months of continued jurisdiction of the courts of the member state of the child's former habitual residence. The purpose of this rule is that the other parent – the holder of rights of access – can effectively ensure ongoing contact by addressing the court which issued the first contact order to modify it and adapt it to the new circumstances triggered by the relocation of the child.

Further, Article 12 provides for a very limited and conditional possibility of a 'prorogation of jurisdiction', i.e. a choice of court agreement. According to Article 12.1 the court of a member state deciding on an application divorce may also rule on matters relating to parental responsibility connected with that application (typically: custody and rights of access), even if the child is not habitually resident in that member state. The court however may only accept such jurisdiction if this has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised (and is in the superior interests of the child). Thus, if (typically) the defendant objects to determining the matters of custody and access rights in the course of divorce proceedings and the child is habitually resident in a country other than the one where divorce proceedings were launched, the court may not decide these matters. This rule comes as a surprise to many national judges, whose national law explicitly requires the court seised with divorce proceedings to –on its own motion (*ex officio*), thus without any motion by the parties– necessarily decide, when pronouncing a divorce, also the matters of custody and access rights (and maintenance) concerning a minor child. Understandably, such provisions of national law must yield to the diverging rule in EU law.

The prorogation of jurisdiction, i.e. jurisdiction established by virtue of agreement of all parties, can also occur in proceedings other than divorce proceedings (e.g. probate proceedings or paternity proceedings). This, however, is only admissible if the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State.

It is important to note that according to Article 12, the (express or otherwise unequivocal) acceptance of jurisdiction must be in place already in the moment when the court is seised. This seems to exclude the possibility of tacit jurisdiction agreement (jurisdiction by submission), where the only indication that the defendant accepts jurisdiction is that he or she enters a defence plea

on the merits without invoking the plea of lack of jurisdiction. In any case, the possibility of tacit jurisdiction agreement in proceedings governed by the Brussels Ia Regulation is excluded already for the reason that the court has to examine *ex officio* whether it has jurisdiction (Article 17). Under most national laws such examination should take place even before the claim or petition is served on the respondent party.

Article 13 relates to situations where a child's habitual residence cannot be established, and jurisdiction cannot be determined on the basis of Article 12. In such case, the courts of the Member State where the child is present shall have jurisdiction. This applies also to refugee children or children internationally displaced because of disturbances occurring in their country.

Article 14 provides for the so-called 'residual jurisdiction' and thereby leaves limited room for applying jurisdictional rules in the member states' national laws. Namely, where no court of a Member State has jurisdiction pursuant to the above rules (typically, where the child is neither habitually resident in a member state nor is he or she physically present there), jurisdiction shall be determined, in each Member State, by the laws of that State (e.g. providing for jurisdiction based on the child's or the parents' nationality)

Article 15 sets out a rule according to which a court which has been seised of a case and which has jurisdiction on the substance is permitted, by way of an exception and subject to certain conditions, to transfer the case to a court of another Member State if the latter is better placed to hear that case because the child has a particular connection to that state. The child shall be considered to have such a particular connection to a Member State which (a) has become the habitual residence of the child after the court was seised; or (b) is the former habitual residence of the child; or (c) is the place of the child's nationality; or (d) is the habitual residence of a holder of parental responsibility; or (e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property. The transfer may take place (a) upon application from a party; or (b) of the court's own motion; or (c) upon application from a court of another Member State with which the child has a particular connection. In any case it is essential that the courts in question communicate and cooperate preferably directly or through the central authorities in order to assess whether the transfer of the case would be in the best interest of the child.

When introduced, Article 15 was perceived to be an important innovation (resembling the concept of *forum non conveniens* in common law jurisdictions) and a paramount expression of genuine judicial cooperation within the European justice area. Nevertheless, due to numerous practical difficulties and insufficient clarity and predictability of the regime, the innovation has thus far been very rarely, if at all, used.

4. PROVISIONAL MEASURES

Article 20 deals with provisional (protective, interim) measures. It permits a court of a member state to adopt in urgent cases, provisional, including protective, measures as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter. The power to grant such provisional measures is further (in addition to condition of urgency) limited by a restriction that they may only be adopted in respect of persons or assets in that State. This restriction led the CJEU to indicate that in case of child abduction (where jurisdiction remains with the court in a country where the child was abducted from) a court in the member state where the child was abducted to may not adopt a

provisional custody order granting custody to the abductor-parent and thus (temporarily) depriving the left-behind parent, who is not present in this state, of his or her right of custody (CJEU, C-403/09 PPU, *Detiček*, 23 December 2009; for a different view see the Opinion of AG Sharpston in C-256/09, Para 147). Furthermore, provisional measures adopted under Article 20 are not recognisable and enforceable in other member states (CJEU, C-256/09, *Purrucker*, 15 July 2010). A further restriction is that the provisional measures, adopted pursuant to Article 20, shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

5. EXAMINATION AS TO JURISDICTION AND *LIS PENDENS*

Pursuant to Article 17 the court must examine on its own motion (*ex officio*) whether it has jurisdiction under this Regulation. In principle this excludes the possibility for the court to attain jurisdiction by virtue of the defendant's entering an appearance.

Article 19 relates to the situation where parallel proceedings are brought concerning the same child and the same cause of action in two member states. Rules on *lis pendens* are set out in order to prevent the existence of irreconcilable judgments relating to the same cause of action. The court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established, and once it is established, shall decline jurisdiction in favour of that court. In addition, Article 16 defines the moment when the court is deemed to be seised. In any case, the court second seised may not re-examine (neither in the course of proceedings nor later, in the stage of recognition and enforcement of the foreign judgment) whether the court first seised has erroneously assumed jurisdiction.

6. RECOGNITION AND ENFORCEMENT

Chapter III of the Brussels IIa Regulation sets out rules on recognition and enforcement of judgments issued in other member states. The Regulation streamlines the procedure for obtaining a declaration of enforceability (exequatur) and considerably restricts grounds for refusal of recognition from other member states. Yet, it still adheres to traditional principles of international private law, where the starting point is that a state is not under an absolute and unavoidable duty to adopt a foreign judgment into its legal order. Rather it can refuse to recognize its effects if certain (however minimal) conditions are not fulfilled. In particular, judgments from the country of origin, in this system, are not directly enforceable in other member states, but are still subject to obtaining of exequatur (declaration of enforceability) in the country of enforcement.

The Brussels IIa Regulation thus did not abolish exequatur, in spite of the EU's permanent ambition to the contrary and although seeds for such development were planted already in the 1999 Tampere Programme. Here it was declared that in civil and family matters the European Council "calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State." An even clearer language as to the pursued policy of abolition of exequatur was used in the 2001 Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters. Here it was stated that "Abolition, pure and simple, of any checks on the foreign judgment by courts in the requested country allows national judgments to move freely throughout the EU". This should result in a system where "each requested State treats these national judgments as if they had been delivered by one of its own courts".

The grounds for non-recognition of judgments relating to parental responsibility are set out in Article 23: (a) such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child; (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought; (c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally; (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard; (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought; (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought, or (g) if the procedure laid down in Article 56 has not been complied with.

It is important to note that the public policy rule in Article 23(a) must be construed very restrictively and applied only exceptionally. The Regulation is based on the principle of mutual trust and Article 26 imposes a clear prohibition of any review of the substance of a judgment given in another Member State (*révision au fond*). Recourse to the public policy rule is thus only possible when the recognition of a judgment given in another Member State would be unacceptable to a considerable extent within the legal order of the State in which the recognition is sought, whereby the best interests of the child should always be taken into consideration. In addition, the breach of public policy must be manifest, i.e. it must concern a rule of law regarded as so 'essential' in the legal order of the State in which recognition is sought or of a right recognised as being fundamental within that legal order (CJEU, C-455/15 PPU, *P v Q*, 19 November 2015). In addition, Article 24 makes it clear that the public policy exception cannot be invoked in respect of jurisdictional rules. Thus, if the court erroneously assumes jurisdiction, the courts of the other member states will nevertheless be bound by that decision and will not be able to reject its recognition on the grounds of violation of the Brussels IIa jurisdictional regime.

The need to obtain exequatur relates to cases where the party seeks enforcement in another member state. Where merely recognition of a foreign judgment is sought (e.g. in order to invoke the objection of *res iudicata* or where the issue of parental responsibility is only a preliminary issue to a claim with a different cause of action), recognition of a judgment can be raised as an incidental question in a court of a Member State, that court may determine that issue (Article 21).

Although in general the Brussels IIa Regulation still adheres to the system of exequatur, its distinctive feature is that it nevertheless abolishes it in respect of two specific types of decisions: orders for access to a child (Article 41) and certain decisions ordering the return of the child in case of international child abduction (Article 42, see *infra* the following chapter). For these types of judgments, the control, in order to ensure that certain procedural guarantees ("minimum standards"), such as the parties' right to be heard have been complied with, is done exclusively in the country of origin (the so-called 'certification approach'). The courts in the country of enforcement cannot re-examine whether the certificate (standard form in Annex III) in the country of origin was rendered in compliance with the Regulation and may not oppose its enforcement (see e.g. CJEU, C-491/10 PPU, *Aguirre Zarraga*, 22 December 2010 C-491/10 PPU). The principle of (required) mutual trust and recognition is thus set to a much higher level.

Pursuant to Article 48 the courts of the member state of enforcement may also make practical arrangements for organising the exercise of rights of access, if the necessary arrangements have not or have not sufficiently been made in the judgment delivered by the courts of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this judgment are respected.

7. THE BRUSSELS IIA RECAST REGULATION

Although firmly adhering to the general system established by its predecessor, the Brussels Ila Recast Regulation nevertheless amends several aspects of Regulation 2201/2003. For example, it strengthens the procedural position of the child and emphasises his or her right to be heard (Article 21). It also aims to enhance the protection of the child by setting out clearer provisions on the placement of a child in another member state, including the need to obtain prior consent for all placements, except where a child is to be placed with a parent (Article 82). Furthermore, the Regulation leaves more room for the party autonomy concerning the choice of court agreements. (Article 10). Certain rules setting out practical arrangements concerning transfer of jurisdiction to better placed courts are adopted (Articles 12 and 13). A new rule of Article 16 relates to incidental questions and brings much needed clarity. If the outcome of proceedings in a matter not falling within the scope of this Regulation before a court of a Member State depends on the determination of an incidental question relating to parental responsibility, a court in that Member State may determine that question for the purposes of those proceedings (and with effects only in these proceedings) even if that Member State does not have jurisdiction under this Regulation.

At least on the face of it, the most important innovation seems to be the complete abolition of *exequatur* for all decisions in matters of parental responsibility. In substance, however, it would be more appropriate to speak of the introduction of the system of ‘reverse *exequatur*’ rather than of its abolition. In principle the need for *exequatur* – in the sense of special procedure for declaration of enforceability in the member state of enforcement – is abolished. However, in a substantive sense the criterion of review (relating foremost to certain minimum standards as well as the public policy) has been retained (but the burden of initiative placed on the party opposing recognition who can file a request for a special review –application for refusal of recognition- in the country of enforcement). Just like the previous system of the old Brussels Ila Regulation resembled the one in the old Brussels I Regulation (Regulation No. 44/2001) the new system follows the concept introduced by the new Brussels I Recast Regulation (Regulation No. 1215/2012). There are no changes concerning the direct enforceability without any possibility to oppose it (“a genuine abolition of *exequatur*”) of decisions in regard to access to child and return orders in case of child abduction.

8. APPLICABLE LAW

Conflict-of-laws rules applicable to matters of parental responsibility are not uniformly regulated by any EU instrument. Such conflicts-of-laws rules are, however, set out in Chapter III of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. In order to determine applicable law in matters of parental responsibility the EU member states apply this Convention (whereas in parts relating to jurisdiction and recognition and enforcement the Convention is superseded by the Brussels Ila Regulation).

The main conflict-of-laws rule is that the states shall apply their own law (*lex fori*). As the jurisdiction shall generally be vested with the courts in the country of the child's habitual residence, this will, by extension, in most cases mean that the law of the state of the child's habitual residence will apply. Only in so far as the protection of the person or the property of the child requires, the court may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection. Article 16 governs the attribution or extinction of parental responsibility. It is important that a change in habitual residence cannot extinguish parental responsibility. Pursuant to Article 17 the exercise of parental responsibility is governed by the law of the state of the child's habitual residence. Applying the rules of Articles 16 and 17 means that in changes of the child's relocation to another member state, the parental responsibility of a left-behind parent subsists notwithstanding the change of habitual residence but the exercise of it is governed by the law of the new state of habitual residence.

LANGUAGE EXERCISES

A. READING COMPREHENSION

I. REFLECT ON THE FOLLOWING QUESTIONS BEFORE READING THE TEXT.

1. What does the word 'ancillary' mean in the context of EU family law?
2. What importance does Advocate General give to 'territorial jurisdiction' in Case C-184/14?
3. In your view, does the Opinion in the A&B case present a practical and viable solution in divorce cases where children are involved?

Now, read the text below:

Case C-184/14

A v B

Request for a preliminary ruling from the Corte Suprema di Cassazione (Italy)

(Best interests of the child – Charter of Fundamental Rights of the European Union – Article 24(2) – Regulation (EC) No 4/2009 – Jurisdiction in matters relating to maintenance obligations –

Request relating to a maintenance obligation in respect of children raised, as ancillary to separation proceedings, in a Member State other than that in which the children are habitually resident –

Regulation (EC) No 2201/2003 – Jurisdiction in matrimonial matters and matters of parental responsibility)

1. For the first time the Court is being called to interpret Article 3(c) and (d) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.
2. Under Article 3(c) and (d) of Regulation No 4/2009, in matters relating to maintenance obligations in Member States, jurisdiction lies with the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, or with the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility, if the matter relating to maintenance is ancillary to those proceedings.
3. In the case brought before the Court, the Corte suprema di cassazione (the Italian Court of Cassation) asks the Court whether a request for child maintenance, raised in the context of separation proceedings, may be regarded as ancillary both to proceedings concerning personal status and to proceedings concerning parental responsibility. Such a possibility would have the consequence of establishing jurisdiction in two courts of different Member States, namely the Italian court hearing proceedings concerning the legal separation of the spouses and the United Kingdom court which has jurisdiction to deal with proceedings relating to parental responsibility.

4. In this Opinion, I shall set out the reasons why I think that Article 3 of Regulation No 4/2009 must be interpreted as meaning that, if there are main proceedings concerning the legal separation of spouses during which a request relating to child maintenance obligations is raised, the court dealing with those main proceedings will, generally, be the court having jurisdiction to deal with that request concerning maintenance obligations. However, this general jurisdiction must give way when the best interests of the child so require. Therefore, taking into consideration the best interests of the child imposes, in this case, a duty to determine territorial jurisdiction by the criterion of proximity. [...]

III. My analysis¹⁰

26. By its question, the referring court asks the Court whether, in essence, Article 3(c) and (d) of Regulation No 4/2009 must be interpreted as meaning that the court which has jurisdiction to entertain proceedings concerning maintenance obligations towards minor children, raised in the context of legal separation proceedings, may be both the court which has jurisdiction to entertain proceedings concerning personal status and the court which has jurisdiction to entertain proceedings concerning parental responsibility.
27. In fact, the response to the question posed assumes that the following points have been resolved. First of all, in the case of children living at home, is the matter of the fixing and apportionment of maintenance obligations towards those children inextricable from the proceedings relating to the separation of their parents? Next, what consequences must be drawn from this with regard to the jurisdiction of the courts before which such separation proceedings have been brought?
28. Taking into consideration the notion of the child's best interests seems to me to dictate the nature of the response that must be provided to the referring court. Furthermore, it is in line with this fundamental principle that I have decided to reword the question in such a way that the child becomes the focal point of this issue.
29. It is indeed undeniable, both in terms of the legal texts and the Court's case-law, that this notion permeates family law in a binding manner when the child's position happens to be affected by the dispute in the main proceedings.
30. I would point out again at this juncture that Article 24(2) of the Charter states that '[i]n all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.' It cannot be disputed that the Charter applies in the present context.
31. The Court has, moreover, had the chance to reiterate, on several occasions, the primordial importance of this principle. [...]
35. The conclusion to be drawn from this reasoning is quite clear. The best interests of the child must be the guiding consideration in the application and interpretation of EU legislation. In this regard, the words of the Committee on the Rights of the Child attached to the office of the UN High Commissioner for Human Rights (OHCHR) are particularly relevant. That committee points out that '(the best interests of the child) constitute a standard, an objective, an approach, a guiding notion, that must clarify, inhabit and permeate all the internal norms, policies and decisions, as well as the budgets relating to children.'

10 Opinion of Advocate General Bot delivered on 16 April 2015. Case C-184.

36. The case-law relating to Regulation No 2201/2003 is clearly transferable to Regulation No 4/2009. It would be incomprehensible if the intensity of this principle, which features among the fundamental rights of the child, could vary depending on the area of family law in question, since, whatever that area may be, the child remains directly concerned.
37. Taking into account these observations, I believe I can add the following clarifying details in response to the first point raised through the rewording of the question referred by the Corte suprema di cassazione.
38. In this context, the interpretation of Article 3(c) of Regulation No 4/2009 has to be addressed.
39. According to the Commission, the connecting factor provided for in Article 3(d) of that regulation can relate only to maintenance obligations with regard to minor children, which are cleared linked to parental responsibility, whereas the connecting factor provided for in Article 3(c) of that regulation can relate only to maintenance obligations between spouses and not also to those concerning minor children.
40. I disagree with that line of reasoning on the following grounds.
41. The way in which Article 3 of Regulation No 4/2009 is structured strikes me as significant. Article 3(a) and (b) of that regulation establishes two grounds for jurisdiction governing situations in which the application concerning maintenance obligations is the main action. In this case it is either the place of the defendant's habitual residence or the place of the creditor's habitual residence that determines this jurisdiction.
42. The two other grounds for jurisdiction provided for in Article 3(c) and (d) of that regulation govern, for their part, situations in which the application concerning maintenance obligations is ancillary, respectively, to proceedings concerning personal status or to proceedings concerning parental responsibility.
43. It is clear that the situation of a single, married, legally separated or divorced person concerns that person's personal status and that it produces effects in regard to third parties.
44. It is also clear that, as the rupture of married status or conjugal life results in the separation of the spouses and the breakup of domestic life, the matter of fixing the maintenance allowance for the children living at home and of allocating the burden of that allowance between the parents is one that must be addressed not only as a matter of course, according to simple common sense, but also, and even more so, for purely legal issues. I would be denying the daily reality of actions of this sort if I did not acknowledge with the strength of the evidence that one aspect — the fixing of the children's maintenance allowance and the allocation of the burden thereof — is the automatic and natural consequence of the other aspect, namely the discontinuance of domestic life. The ancillary character, in the legal sense of the term, that links the first aspect to the second therefore appears to me to be irrefutably established in the present case.
45. What consequences are to be drawn from this first conclusion? The second point arising from the rewording of the question now calls for examination.
46. The consideration of the best interests of the child here assumes its role as the guiding principle.
47. Any solution that consists in drawing a distinction between, on the one hand, the separation proceedings that have been brought before the court of a Member State and, on the other hand, the proceedings concerning the children's maintenance allowance, coming within the jurisdiction of the court of another Member State, runs, in my view, totally counter to the best interests of the child.

48. In order to satisfy oneself in this regard, one need only consider that the legal logic of this system would mean that the court with jurisdiction to rule on the application concerning the maintenance allowance would have to wait until the decision on the cessation of conjugal life (legal separation or divorce) had first been definitively handed down. This would result in an inevitable period of latency during which the children's future would be uncertain.
49. Even if the court with jurisdiction to entertain the proceedings concerning the matrimonial link were to take what it might regard as provisional measures on these points, the solution of continuity between the different phases of the proceedings would not generate any fewer unacceptable delays concerning the principles mentioned above, since it would be imposing measures for an indeterminate period, taken in breach of the principle of the best interests of the child.
50. It should also be added, perhaps even unnecessarily, that this clearly prejudicial situation would not have to be faced by children whose parents remained established in the Member State of their nationality. In other words, the parents' exercise of the freedom of movement and freedom of establishment lies at the root of an unfavourable situation which would not affect children whose parents divorce or separate legally and have not left their Member State of origin.
51. It is thus necessary to bring together in one court the jurisdiction to entertain both the main initial proceedings concerning the dissolution of conjugal life as well as ancillary actions of fundamental importance for the child. The key issue is to determine where jurisdiction lies and, in this, the notion of the child's best interests should guide our consideration. The immediate and simplest idea would be to link everything to the jurisdiction of the court called to deal with the proceedings concerning the parents' separation.
52. Beneath its simplicity, the idea hides a genuine difficulty. This relates back to Article 3(1)(b) of Regulation No 2201/2003, which gives the parents the option of, *inter alia*, bringing the case before a court that has jurisdiction merely by reason of their shared nationality, something which the parents have done in this case. However, Regulation No 4/2009, in Article 3(c) and (d), expressly excludes such jurisdiction, in terms of an action relating to maintenance obligations both in the framework of proceedings concerning personal status and in the framework of proceedings concerning parental responsibility.
53. This finding therefore appears to place these two regulations on a collision course, making it necessary to choose a solution consisting of dividing up the proceedings which we earlier described as not being an option.
54. The contradiction is, in fact, merely apparent. Regulation No 2201/2003 must be made subject to the mandatory requirement that the best interests of the child be taken into account. With respect to this matter, it also suffices to recall the Court's case-law referred to in points 32 to 34 of this Opinion.
55. In addition, the actual text of recital 12 in the preamble to Regulation No 2201/2003 states, as it may be recalled, that '[t]he grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.'
56. It is precisely this criterion of proximity that must be taken into account.
57. It is, indeed, this criterion that renders Regulations No 2201/2003 and No 4/2009 compatible in this area.

58. The criterion of proximity, being closely linked to the best interests of the child, imposes an obligation to place the matter within the overall jurisdiction of the courts of the children's place of residence. This explains that, within the framework of Regulation No 4/2009, jurisdiction based solely on the parents' nationality is excluded, whether with regard to the maintenance allowance or to parental responsibility, since, in that case, the proximity criterion would clearly be set at nought, and, with it, the best interests of the child.
59. Furthermore, and by reason of the same principles, amongst the grounds for jurisdiction set out in Article 3 of Regulation No 2201/2003, this time the same criterion of proximity itself, the preponderant nature of which is expressed in recital 12 in the preamble to that regulation, imposes a duty to uphold the habitual residence of the spouses as a ground for jurisdiction. It must also be noted — and this point, too, is not bereft of significance — that the criterion of habitual residence is the first of those listed in Article 3 of that regulation.
60. It is clear that this criterion of habitual residence of the spouses designates the place where the family residence was to be found, and, of course, that of the children, prior to separation.
61. As such, the proximity criterion is satisfied. Moreover, if any doubt should remain as regards the compatibility of Regulations No 2201/2003 and No 4/2009 on this specific point, the '*lex specialis*' character of Regulation No 4/2009 will suffice to resolve the debate in its favour along the lines of the interpretation here proposed.
62. In summary, it therefore appears possible to describe the situation that results from divorce or legal separation of a couple with children at home, namely that the initial determination of the maintenance allowance and the allocation of the parents' responsibility to contribute to their children's maintenance must be raised — as well as, by virtue of similarity, matters relating to parental authority — in the context of the proceedings initiated to secure a divorce or legal separation.
63. Because of the binding nature of the requirement that account be taken of the child's best interests, the court with jurisdiction to entertain the proceedings must respect the criterion of proximity, to the exclusion of any other.
64. In the dispute in the main proceedings, the best interests of the child therefore require that jurisdiction of the Italian courts be declined in favour of that of the courts of the Member State in which the children are habitually resident, namely the courts of the United Kingdom, those latter courts, moreover, having jurisdiction to entertain the proceedings concerning parental responsibility in accordance with Article 8(1) of Regulation No 2201/2003.
65. It follows, admittedly, in a situation such as that in the main proceedings, that the parties' freedom to choose the court having jurisdiction is limited. That does not appear to be questionable or at variance with the fundamental principles governing this area since the parties in question are the parents and the restriction of their choice is imposed upon them for the sake of the best interests of their child/children. [...]

II. DETERMINE WHETHER THE STATEMENTS BELOW ARE TRUE OR FALSE.

1. Legal separation in EU family law seeks to touch key legal issues in cases regarding divorce or separation where parental responsibility and maintenance obligations are involved. _____
2. Having two courts in two different member states, in principle is not disruptive for spouses with children seeking marriage dissolution. _____
3. A possible way to avoid a head-on collision in proceedings regarding separation and parental responsibility is to combine jurisdictions. _____

4. Based on the analysis, the key principle underpinning separation procedures in cases affecting children is for the court to guarantee fair apportionments. _____
5. The Advocate General's suggestion in cases of separation where minors are involved is first and foremost to place, as a guiding principle, the focus primarily on the best interest of the child(ren). _____

III. FILL IN THE GAPS WITH THE MISSING WORD COMBINATIONS AND COLLOCATIONS.

brought before the Court
criterion of proximity
entertain proceedings

give way
lies with the court
status of a person

territorial jurisdiction
to deal with

1. Under Article 3(c) and (d) of Regulation No 4/2009, in matters relating to maintenance obligations in Member States, jurisdiction _____ which, according to its own law, has jurisdiction.
2. The court thus has jurisdiction to _____ concerning the _____ of a person if the matter relating to maintenance is ancillary to those proceedings.
3. In the case _____, the Corte Suprema di Cassazione asks whether a request for child maintenance, may be regarded as ancillary both to proceedings concerning personal status and to parental responsibility.
4. The court dealing with the main proceedings will, generally, be the court having jurisdiction _____ that request concerning maintenance obligations.
5. This general jurisdiction must _____ when the best interests of the child so require.
6. Taking into consideration the best interests of the child makes it necessary in this case for a duty to determine _____.
7. Underlying the criterion of the child's best interest is the _____.

IV. FILL THE GAPS WITH VERBS, NOUNS, ADJECTIVES AND PHRASES. CLUES PROVIDED IN PARENTHESIS AND THE FIRST LETTER OF EACH WORD IS GIVEN.

1. In this regard, the words of the Committee on the Rights of the Child attached to the office of the UN High Commissioner for Human Rights are particularly r_____ (associated, well suited, adj.).
2. The committee p_____ o_____ (indicate, suggest, verb) that '(the best interests of the child)' constitute a standard.
3. The objective constitutes a/an a_____ (perspective, noun) that must clarify, inhabit and permeate all the internal norms, policies and decisions, as well as the budgets relating to children.'
4. The case-law relating to Regulation No 2201/2003 is clearly t_____ (applicable, adj.) to Regulation No 4/2009.
5. According to the Commission, the c_____ f_____ (linking element, adj. + noun) provided for in Article 3(d) of that regulation can relate only to maintenance obligations with regard to minor children.

6. The way in which Article 3 of Regulation No 4/2009 is structured s_____ (appears to, verb) me as significant.
7. The application concerning maintenance obligations is a_____ (of secondary relevance, adj.), respectively, to proceedings concerning personal status or to proceedings concerning parental responsibility.
8. It is clear that, as the rupture of married status or c_____ l_____ (married life, adj. + noun) results in the separation of the spouses...
9. The b_____ (termination, noun) of domestic life must be addressed not only as a matter of course, according to simple common sense.
10. An important aspect of separation proceedings involving children's maintenance allowance is a_____ (designation, noun).

V. PROVIDE THE APPROPRIATE NEGATIVE FORMS FOR THE WORDS LISTED. USE THE WORDS TO CREATE SENTENCES.

1. adequate
2. responsible
3. continuous
4. favourable
5. licit
6. certain
7. extricable
8. refutable
8. properly
9. interpreting

VI. FILL THE GAPS WITH THE APPROPRIATE SEQUENCE OF WORDS.

as well as
at the root of
at variance
counter to

faced by
for the sake of
imposed upon
in breach of

in this regard
on the one hand
on the other hand
period of latency

set at nought
solely on
taken into account
to deal with

1. Any solution that consists in drawing a distinction between, _____, the separation proceedings that have been brought before the court of a Member State and, _____, the proceedings concerning the children's maintenance allowance, coming within the jurisdiction of the court of another Member State, runs, in my view, totally _____ the best interests of the child.
2. In order to satisfy oneself _____, one need only consider that the legal logic of this system would mean that the court with jurisdiction to rule on the application concerning the maintenance allowance would have to wait until the decision on the cessation of conjugal life (legal separation or divorce) had first been definitively handed down. This would result in an inevitable _____ during which the children's future would be uncertain.

3. The solution of continuity between the different phases of the proceedings would not generate unacceptable delays. These would be considered _____ the principle of the best interests of the child.
4. Clearly prejudicial situations would not have to be _____ children whose parents remained established in the Member State of their nationality.
5. The lack of continuity between different phases of separation proceedings lies _____ of an unfavourable situation.
6. It is thus necessary to bring together in one court the jurisdiction to entertain both the main initial proceedings concerning the dissolution of conjugal life _____ ancillary actions of fundamental importance for the child. The key issue is to determine where jurisdiction lies and, in this, the notion of the child's best interests should guide our consideration. The immediate and simplest idea would be to link everything to the jurisdiction of the court called _____ the proceedings concerning the parents' separation.
7. In EU family law matters, the criterion of proximity must be _____.
8. Within the framework of Regulation No 4/2009, jurisdiction based _____ the parents' nationality is excluded.
9. Jurisdiction based solely on the parents' nationality would _____ both the proximity criterion and also the best interests of the child.
10. The parties' freedom to choose the court having jurisdiction is limited. That does not appear to be _____ with the fundamental principles governing this area since the parties in question are the parents and the restriction of their choice is _____ them _____ for the sake of the best interests of their child/children.

B. FURTHER LANGUAGE PRACTICE

I. CHOOSE THE CORRECT OPTION IN THESE FRAGMENTS FROM THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION.

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any (1) _____, they shall take all the appropriate measures:

(1) a) intermediate b) intermediary c) medium

to discover the (2) _____ of a child who has been wrongfully removed or retained;

(2) a) whereabouts b) place c) whereabouts

to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken (3) _____ measures;

(3) a) provisory b) providing c) provisional

to secure the voluntary return of the child or to bring about an amicable / friendly / consensual (4) _____ of the issues;

- (4) a) resolve b) resolving c) resolution
to exchange, where desirable, (5) relating to the social background of the child;
- (5) a) information b) informations c) evidences
to provide information of a general character as to the law of their State in (6) with
the application of the Convention;
- (6) a) respect b) regard c) connection
to initiate or facilitate the institution of judicial or administrative (7) with a view
to obtaining the return of the child and, in a proper case, to make arrangements for organizing or
securing the effective exercise of rights of access;
- (7) a) proceeding b) proceedings c) procedure
where the circumstances so require, to provide or facilitate the provision of legal (8)
and advice, including the participation of legal (9) and advisers;
- (8) a) assistance b) aid c) advice
- (9) a) counsel b) council c) councilor

II. PARENTAL RESPONSIBILITY: WORD FORMATION

(Source: *The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*, 19 October 1996)

1. For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, (guard, noun, pl.) or other legal (represent, noun, pl.) in relation to the person or the property of the child.
2. The measures referred to in Article 1 may deal in particular with:
 - a) the attribution, (exercise, noun), termination or (restrict, noun) of parental responsibility, as well as its delegation;
 - b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of (reside, noun) [...];
 - c)(guardian, abstract noun), (curator, abstract noun) and analogous institutions;
 - d) the (designate, noun) and functions of any person or body having charge of the child's person or property, representing or assisting the child;
 - e) the (place, noun) of the child in a foster family or in institutional care [...];
 - f) the (supervise, noun) by a public authority of the care of a child by any person having charge of the child;
 - g) the administration, conservation or (dispose, noun) of the child's property.
3. In exercising their jurisdiction under the (provide, noun, pl.) of Chapter II, the authorities of the Contracting States shall apply their own law.
4. The attribution or extinction of parental responsibility by (operate, noun) of the law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the (habit, adj.) residence of the child.

5. The (remove, noun) or retention of a child is to be considered wrongful where it is in breach of the rights of custody attributed to a person, an institution or any other body, either (joint, adv.) or alone, under the law where the child was (habitual, adv.) resident immediately before the (remove, noun) or retention.

III. FILL IN THE GAPS WITH WORDS DERIVED FROM THE ONE IN BRACKETS. THE FIRST ONE HAS BEEN DONE FOR YOU.

Matters excluded from the Regulation

Article 1(3) (NUMBER) enumerates (1) those matters which are excluded from the scope of the Regulation even though they may be closely linked to matters of (PARENT) (2) responsibility (e.g. (ADOPT) (3), emancipation, the name and forenames of the child).

The Regulation does not apply to maintenance obligations

Maintenance obligations and parental (RESPONSIBLE) (4) are often dealt with in the same court proceeding. Maintenance obligations are, however, not covered by the Regulation, since they are already governed by the Brussels I Regulation. A court which is competent pursuant to the Regulation will nevertheless (GENERAL) (5) have jurisdiction to rule also on maintenance matters by (APPLY) (6) of Article 5(2) of the Brussels I Regulation. This (PROVISION) (7) allows a court which is competent to deal with a matter of parental responsibility also to decide upon maintenance if that question is ancillary to the question of parental responsibility. Although the two issues would be dealt with in the same proceeding, the (RESULT) (8) decision would be recognised and (FORCE) (9) according to different rules. The part of the decision relating to maintenance would be recognised and enforced in another Member State pursuant to the rules of the Brussels I Regulation whereas the part of the decision relating to parental responsibility would be recognised and enforced pursuant to the rules of the new Brussels II Regulation.

IV. PLEASE, FILL IN THE VERBS IN THE PARAGRAPH. IN SOME CASES YOU WILL HAVE TO USE THE CORRECT TENSE.

(<https://e-justice.europa.eu/fileDownload.do?id=98eb296c-a790-4feb-8001-5a990b513521>)

concern, covers, define, encompass, fall, issue, leave, marry, qualify

The term “parental responsibility” is widely defined and (1) all rights and duties of a holder of parental responsibility relating to the person or the property of the child. This (2) not only rights of custody and rights of access, but also matters such as guardianship and the placement of a child in a foster family or in institutional care. The holder of parental responsibility may be a natural or a legal person.

The list of matters (3) as “parental responsibility” pursuant to the Regulation in Article 1(2) is not exhaustive, but merely illustrative. In contrast to the 1996 Hague Convention on child

protection (see chapter XI), the Regulation does not _____ (4) a maximum age for the children who are covered by the Regulation, but _____ (5) this question to national law. Although decisions on parental responsibility _____ (6) in most cases minors below the age of 18, persons below 18 years may be subject to emancipation under national law, in particular if they _____ (7). Decisions _____ (8) with regard to these persons do not in principle qualify as matters of “parental responsibility” and consequently _____ (9) outside the scope of the Regulation.

UNIT 4

CHILD ABDUCTION: THE INTERFACE BETWEEN THE BRUSSELS II REGULATION AND THE HAGUE CONVENTION OF 25th OCTOBER 1980

INTRODUCTION

Aleš Galič

With the rapid growth of cross-border mobility and cross-border marriages and unions (and, by extension, divorces and dissolutions of unions) the number of international child abductions has been constantly growing. International parental child abduction cases are amongst the most conflictive and escalated cross-border disputes in the area of family law. They yield complex issues of facts and law (both as to the merits as well as jurisdictional and other procedural issues). In addition, international child abduction cases increasingly often sparkle heated (social) media campaigns, not immune to nationalism and gender and cultural bias and resulting in the upsurge in public, institutional and sometimes even political pressure (for the most notorious example, see the judgment of the ECtHR in the case *Rinau v Lithuania*, Application no. 10926/09, 14 January 2020).

What adds to the complexity of international child abduction cases in the EU context is the fact that European judges need to apply, or at least consider, two parallel legal instruments: the Hague Convention on the Civil Aspects of International Child Abduction of 1980 (hereinafter, the Hague Convention) as well as the Brussels IIa Regulation. The Hague Convention established a system that is globally applicable and aims to protect children internationally from the harmful effects of abduction by ensuring by the swiftest possible means the restoration of the status quo ante, i.e. the child's prompt return to the country of origin. Equally important is the goal to secure protection for the rights of custody and access as established by the law in the country of origin. The main invention of the Hague Convention is that the left-behind parent can avail him/herself of the use of special rapid procedure, established by the Convention, in the courts of the country to which the child has been abducted ('country of refuge'). As explained by the Hague Conference itself (See HCCH, Outline of the 1980 Hague Child Abduction Convention, 2014), the principle of prompt return serves as a deterrent to abductions and wrongful removals, and this is seen by the Convention to be in the interest of children generally. The return order is designed to restore the status quo which existed before the wrongful removal or protection, and to deprive the wrongful

parent of any advantage that might otherwise be gained by the abduction. Such solution accords with the best interests of the child.

The Brussels IIa Regulation does not replace the system introduced by the Hague Convention. As stated in its Recital No. 17, it complements it (for cases involving two EU member states; except Denmark). The guiding principles of the Hague Convention, as summarized above, were taken over by the Regulation. Both legal instruments are intended to produce a deterrent effect and to prevent the abducting parent to achieve any advantage, such as a change in the court's jurisdiction over matters relating to parental responsibility, through unlawful actions (see e.g. EU Commission's Practice Guide for the Application of the Brussels IIa Regulation, 2015, p. 49). Whereas the Hague Convention aims at the restoration of the status quo by requiring the requested State to order the child's immediate return, the Brussels IIa Regulation ensures that the courts of the state of origin retain jurisdiction to decide on the question of custody notwithstanding the abduction. Both instruments are based on the assumption that the courts in the State of the (former) habitual residence of the child (the country where the child resided immediately before the abduction) are best placed to make a custody order so as to safeguard the child's best interest.

The deterrent effect, aimed to ensure the protection of the best interests of the child, both in the Hague Convention as well as in the Brussels IIa Regulation, was explained by the AG Bot in his View in case C-403/09 PPU, *Dežić*: "It was in the past an all too common practice in cases of divorces of spouses of different nationalities for whichever parent wanted to obtain custody of a child or children to take refuge with the child or children in question in his or her country of origin and to apply to the national courts for a ruling on custody, taking no account of any judgments delivered in another State. The result was that the relationship between the child and the other parent was severed for many years if not permanently, a situation which no one can pretend is consistent with the interests of the child."

The CJEU has already clarified numerous uncertainties concerning the interface between the Hague Convention and the Brussels IIa Regulation, thus ensuring more clarity and legal certainty with regard to the uniform application of the Brussels IIa Regulation. The regime established by the Brussels IIa Regulation is based on the principle of mutual trust and cooperation. In reality, however, it is often a mistrust in foreign judiciaries that characterizes international child abduction cases and intra-EU cases are regrettably often no exception in this regard.

1. WHAT CONSTITUTES AN INTERNATIONAL CHILD ABDUCTION?

An international parental child abduction occurs when one parent unlawfully takes ('wrongful removal') or retains ('wrongful retention') a child in a country other than that of the child's habitual residence.

To start with, it must be established that the child was habitually resident in a country other than the one where he was removed or retained. Neither the Brussels IIa Regulation nor the Hague Convention define the concept of 'habitual residence'. For the interpretation of habitual residence as an autonomous concept of EU law, see *supra*, Unit III, Section 2.

Second, the removal or retention of the child in the country, other than the country of the child's habitual residence, must be unlawful, i.e. it must be in breach of the other parent's right of custody under the law of the State in which the child was habitually resident immediately before the removal or retention. The right of custody may be acquired by a judicial or administrative decision

(including a provisional/interim measure) or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention. It is not excluded that even a parent, who acquired by a judgment a sole custody, could commit a child abduction. While the Brussels IIa Regulation stipulates that the right of custody includes in particular the right to determine the child's place of residence (Art. 2, point 9), this is subject to national law. Pursuant to Art. 2, point 11, custody shall namely be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.

Finally, it has to be established that at the time of removal or retention the left-behind parent has actually exercised, either jointly or alone, such right of custody (or would have exercised it but for the child's removal or retention).

2. PROCEEDINGS IN THE STATE OF REFUGE

In order to obtain the return of the abducted child, the aggrieved parent ('the left-behind parent') can launch legal proceedings either in the country where the child was abducted to ('the state of refuge') or in the country where the child was habitually resident immediately before the abduction ('the state of origin').

In the country of refuge, the left-behind parent can avail him/herself (either directly or with assistance of the Central Authority in his/her country) of the use of special rapid procedure for the immediate return of the child under the Hague Convention. As set out in Art. 13 Brussels IIa Regulation, a court to which an application for return of a child is made under the Hague Convention shall use the most expeditious procedures available in national law. The emphasis on the necessity of expedition of the conduct of return proceedings should be understood against the background that a return order is not a custody determination. It is simply an order that the child be returned to the jurisdiction which is most appropriate to determine custody and access (HCCH, Outline of the 1980 Hague Child Abduction Convention, 2014). Equally important is the deterrent effect as well as the need to act promptly to negate the harmful effects of the unilateral action, i.e. to prevent that the act of the child abduction will become a *fait accompli* as the longer an abducted child spends in the State of refuge the more difficult it is to ultimately order a return.

Although the deterrent effect is in the forefront of the Hague Convention mechanism, the circumstances of each individual case are important as well. Therefore, in exceptional and narrowly defined cases, the court may deny the application for the return of the child under the Hague Convention. Pursuant to Art. 13 of the Hague Convention – which is practically the most important exception – the return may be denied where there is grave risk that the child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation and when the child objects to the return. The return may also be denied if the left-behind parent was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention. Furthermore, the court may refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. It is however important to stress that the child has no absolute 'veto-power' in this regard. The final decision rests in the discretion of the court. Finally, pursuant to Art. 20 of the Hague Convention, the return may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

It is inherent in the Hague Convention that these exceptions should be construed restrictively (Pérez-Vera, Explanatory Report to the HCCA, 1982, para. 34). Otherwise the whole system, which is based on the idea of international cooperation and which emphasizes the deterrent effect, would become ineffective. While the courts in some countries are well aware of the exceptional nature of the possibility to deny the request for return, in numerous other countries the exception has gradually become almost a rule. What equally compromises the system is that many courts seised with the Hague Convention return the request and, instead of ensuring a swift and summary decision engage in a full-scale and lengthy evidentiary procedure, and conduct their own investigation and evaluation of what will be best for the child. Thereby, it is overlooked that this is precisely what the Hague Convention wished to avoid by stressing that the return order is not a final determination of custody and that it is the courts in the country of origin that retain jurisdiction to make such a final determination.

Article 13 Hague Convention exception applies also in intra-EU abduction cases. It is merely supplemented with a rule that a court cannot refuse to return a child on the basis of Article 13b ('grave risk') if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. Nevertheless, in accordance with the rule that the (non-)return decision under the Hague Convention is not a final decision on custody, the 'final word' on the issue of the return of the child remains with the court in the state where the child was habitually resident immediately before the abduction. As will be explained in the following chapter, in this context the notion of the "final word" is indeed meant quite literally.

What adds to the conundrum of jurisdictional clashes in international abduction cases is that it is often not the left-behind parent but the abductor-parent ("the taking parent") who launches legal proceedings in the state of refuge. These of course are not proceedings under the Hague Convention, but proceedings aimed at obtaining a favourable – final or temporary – decision on custody. As explained above, the speculation that the act of moving a child to another country, would – to the benefit of the taking parent – result in a change of jurisdiction, is often an important incentive for the parent contemplating to abduct the child. However, it is a central concern both of the Hague Convention mechanism as well as of the complementing rules of the Brussels IIa regulation that the wrongful parent should not enjoy any advantage, such as change of jurisdiction, that might otherwise be gained by the abduction. Thus, except in very narrowly defined circumstances, an attempt of the taking parent to bring the issue of parental responsibility to a court of refuge should inevitably fail. This applies not only for motions for a final decision on the merits but also for motions for provisional/interim orders aiming to grant the taking parent a temporary right of custody (see CJEU C-403/09 PPU, *Detiček*, 23 December 2009).

3. PROCEEDINGS IN THE STATE OF ORIGIN

The Brussels IIa Regulation ensures that the courts of the Member State of origin retain jurisdiction to decide on the question of custody notwithstanding the abduction. This is in line with a general legal principle that nobody should enjoy any benefit (such as obtaining a more favourable jurisdiction of the court) of their own unlawful actions.

Thus, in cases of international child abduction the jurisdiction to decide on the merits the issue of parental responsibility remains with the courts in the country where the child was habitually resident immediately before the abduction. The only precondition is that the left-behind parent also acts reasonably quickly. Pursuant to Art. 10 of the Regulation, if (1) the left-behind parent has not

filed (or has withdrawn) a request for the return of the child within one year and if (2) in addition, the child has resided in that other Member State for a period of at least one year and has settled in his or her new environment, the jurisdiction shall indeed shift to the country of the child's new habitual residence. It has to be stressed that the left-behind parent can prevent such shift already by launching return proceedings within one year, and it is not necessary that they are also terminated within one year.

As stated above, the rejection of the return application under the Hague Convention by a court in the country of refuge is not the end of the story. The court must transmit a copy of its decision to the court in the state of origin, which may then examine a question of custody at the request of a party, if it has not already been seised of the question (Art. 11.6 Brussels IIa Regulation). If the court of origin takes a decision entailing the return of the child, notwithstanding a previous judgment of non-return pursuant to Article 13 of the 1980 Hague Convention in the state of refuge, this decision is directly recognised and enforceable in the requested Member State without the need for exequatur (Art. 11.8 Brussels IIa Regulation). It is sufficient that the court in the country of origin issues a certificate confirming that certain conditions were fulfilled (inter alia, that the child and the taking parent were given an opportunity to be heard; see Art. 42 Brussels IIa Regulation). The courts of the country of refuge are bound by such certificate and may not second-guess whether the findings in the certificate issued by the court in the country of origin are accurate. Not even are they entitled to oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the MS of origin which handed down that judgment may have infringed Article 42 of the Brussels IIa Regulation, interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin (CJEU C-491/10 PPU, *Aguirre Zarraga*, 22 December 2010). This is an expression of the principle of full mutual trust and recognition. On the other hand, there is also an element of cooperation. The court in the state of origin is obliged to specifically and explicitly address and examine and give reasons as to all the concerns that previously led the court in the state of refuge to refuse the application for return of the child under the Hague Convention (Art. 42.2, Point (c)). Equally important, change of circumstances (like that due to a lapse of time the child has become so well integrated into the new society that the return would not be in his or her best interest any longer) may not be pleaded in the country of refuge and is not an available ground for refusal of enforcement. Such change of circumstances must be pleaded in the court which has jurisdiction on the merits – thus the court in the member state of origin which should also hear any application to suspend enforcement of its judgment. (CJEU C-211/10 PPU, *Doris Povse v. Mauro Alpagó*, 1 July 2010).

4. THE BRUSSELS IIA RECAST REGULATION

Concerning international child abduction, the new Brussels IIa Recast Regulation (Regulation No. 2019/1111) which shall come into force on 1 August 2022 introduces certain novelties and contains enhanced and clearer rules (in a separate chapter; Chapter III, Arts. 22-30, along with the main jurisdictional rule in Art. 9). It, however, does not fundamentally alter the existing system as to how the Hague Convention operates in the framework of the Brussels II regime. Most importantly, the full abolition of exequatur (without any possibility to object) of return decisions adopted by a court of the child's habitual residence immediately before the abduction, notwithstanding the previous refusal of the request for return under the Hague Convention remains in place (Art.

29.6). The need to act expeditiously is further emphasized as well as the need to ensure that the child is given the opportunity to be heard. In addition, new Article 25 underlines the obligation of the courts in the member states to promote the use of alternative dispute resolution in the course of return proceedings. The benefit of mediation and other ADR mechanisms in cross-border child abduction cases has long been recognized both by the Hague Convention as well as by the European Parliament.

LANGUAGE EXERCISES

A. READING COMPREHENSION

I. CHOOSE THE CORRECT ANSWER.

(1) OF THE COURT (First Chamber)

22 December 2010

In (2) C-491/10 PPU,

- | | | | |
|-----------------|----------------|-----------------------|-------------|
| (1) a) judgment | b) finding | c) preliminary ruling | d) sentence |
| (2) a) action | b) proceedings | c) case | d) file |

(3) a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Celle (Germany), made by decision of 30 September 2010, received at the Court on 15 October 2010, in the proceedings

- | | | | |
|---------------|------------------|----------------|-----------------|
| (3) a) action | b) reference for | c) referral to | d) transfer for |
|---------------|------------------|----------------|-----------------|

Joseba Andoni Aguirre Zarraga

v

Simone Pelz,

THE COURT (First (4)), [...]

- | | | | |
|-------------|-------------|------------|------------|
| (4) a) unit | b) division | c) section | d) chamber |
|-------------|-------------|------------|------------|

after (5) _____ the Advocate General,

- | | | |
|---------------------|------------|------------|
| (5) a) listening to | b) reading | c) hearing |
|---------------------|------------|------------|

gives the following

Judgment

This reference for a preliminary ruling concerns the interpretation of Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning (6) and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No.1347/2000 (OJ2003 L338, p.1).

- | | | | |
|---------------------|---------------|-----------|---------------|
| (6) a) jurisdiction | b) competence | c) powers | d) discretion |
|---------------------|---------------|-----------|---------------|

The reference was made in (7) between Mr Aguirre Zarraga and Ms Pelz where the issue is the return to Spain of their daughter Andrea, who is currently in Germany with her mother.

- | | | | |
|------------------|----------------|---------------|---------------|
| (7) a) procedure | b) proceedings | c) procedures | d) proceeding |
|------------------|----------------|---------------|---------------|

The dispute in the main proceedings and the questions referred for a preliminary ruling

On the basis of the order for reference and the procedural file sent to the Court by the **(8)** court, the background to the **(9)** in the main proceedings and the various proceedings in which the parties to the main proceedings are involved can be summarised as follows.

- (8) a) referred b) referral c) reference d) referring
 (9) a) dispute b) litigation c) controversy d) issue

Background to the dispute in the main proceedings

Mr Aguirre Zarraga, **(10)** Spanish nationality, and Ms Pelz, of German nationality, were married on 25 September 1998 at Erandio (Spain). That marriage produced a daughter named Andrea who was born **(11)** 31 January 2000. The family's habitual place of residence was Sondika (Spain).

- (10) a) of b) with c) from d) off
 (11) a) at b) on c) in d) of

When, towards the end of 2007, the relationship of Ms Pelz and Mr Aguirre Zarraga deteriorated, they separated, and **(12)** both parties brought divorce proceedings **(13)** the Spanish courts.

- (12) a) hereafter b) thereafter c) therein d) herewith
 (13) a) into b) to c) in front of d) before

Proceedings before the Spanish courts

Both Ms Pelz and Mr Aguirre Zarraga **(14)** sole rights of custody in respect of the child of the marriage. By **(15)** of 12 May 2008 the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao (Court of First Instance and Preliminary Investigations No.5 of Bilbao) provisionally **(16)** rights of custody to Mr Aguirre Zarraga, while Ms Pelz was granted rights **(17)** access. Following that judgment, Andrea went to her father's home.

- (14) a) looked for b) searched c) sought d) asked
 (15) a) finding b) injunction c) ruling d) judgment
 (16) a) awarded b) ordered c) admitted d) recognised
 (17) a) to contact b) of access c) to access d) of contact

Access rights

That judgment was based on, *inter alia*, the recommendations made by the Equipo Psicosocial Judicial (a body providing psychosocial services to the courts) in a report prepared at the request of the judge concerned. That report stated that custody should be awarded to the father, since he was best **(18)** to ensure that the family, school and social environment of the child was maintained. Since Ms Pelz had repeatedly expressed her wish to settle in Germany with her new **(19)** and her daughter, the court considered that the award of custody to the mother would have been **(20)** to the conclusions of that

report and would also have been **(21)** to the child's welfare.

- | | | | | |
|------|----------------|--------------|---------------|------------------|
| (18) | a) settled | b) located | c) placed | d) positioned |
| (19) | a) partner | b) companion | c) couple | d) colleague |
| (20) | a) adverse | b) opposite | c) contrary | d) contradictory |
| (21) | a) detrimental | b) hurtful | c) disturbing | d) bad |

In June 2008 Ms Pelz moved to Germany and settled there, and now lives there with her new partner. In August 2008, at the end of the summer holidays which she had spent with her mother, Andrea remained with her mother in Germany. Since then, Andrea has not returned to her father in Spain.

Since the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao considered that from 15 August 2008 Andrea had been living with her mother in Germany in **(22)** of its judgment of 12 May 2008, on 15 October 2008 that court **(23)** a fresh judgment in respect of **(24)** measures requested by Mr Aguirre Zarraga, which included prohibiting Andrea from leaving Spanish territory in the company of her mother, any member of her mother's family or any person close to Ms Pelz. Further, that judgment suspended -until **(25)** judgment- the rights of access previously granted to Ms Pelz.

- | | | | | |
|------|---------------|---------------|------------------|-----------------|
| (22) | a) breach | b) break | c) contravention | d) disobedience |
| (23) | a) handed off | b) handed out | c) handed down | d) handed in |
| (24) | a) provisory | b) providing | c) provision | d) provisional |
| (25) | a) definite | b) final | c) definitive | d) ultimate |

In July 2009 the proceedings in relation to rights of custody in respect of Andrea were continued before the same court. The court considered that it was necessary both to obtain a fresh expert **(26)** and to hear Andrea personally and fixed dates for both in Bilbao. However, neither Andrea nor her mother attended on those dates. According to the referring court, the Spanish court **(27)** rejected Ms Pelz's application that she and her daughter be permitted to leave Spanish territory freely after the expert report and Andrea's **(28)** Nor did that court agree to Ms Pelz's express request that Andrea **(29)** heard via video conference.

- | | | | | |
|------|--------------|--------------|------------------|----------------|
| (26) | a) report | b) account | c) pronouncement | d) brief |
| (27) | a) denied | b) neglected | c) rejected | d) refused |
| (28) | a) case | b) hearing | c) interrogation | d) questioning |
| (29) | a) was to be | b) would be | c) be | d) was |

By judgment of 16 December 2009 the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao awarded **(30)** rights of custody in respect of Andrea to her father. Ms Pelz brought before the Audiencia Provincial de Bizkaya (Biscay Provincial Court) an appeal **(31)** that judgment which included the request that Andrea be heard.

- | | | | | |
|------|------------|---------|--------------|---------|
| (30) | a) unique | b) only | c) exclusive | d) sole |
| (31) | a) against | b) for | c) on | d) to |

By judgment of 21 April 2010 the Audiencia Provincial dismissed that request on the ground that, according to Spanish rules of **(32)**, the **(33)** of evidence on appeal is possible only in certain circumstances expressly defined by legislation. The failure by a duly **(34)** party to attend voluntarily a first instance hearing is not one of those

circumstances. For the rest, the proceedings are still **(35)** before the Audiencia Provincial.

- | | | | | |
|------|--------------|-----------------|----------------|-----------------|
| (32) | a) action | b) process | c) proceedings | d) procedure |
| (33) | a) rendering | b) fabrication | c) production | d) issue |
| (34) | a) notified | b) communicated | c) announced | d) addressed |
| (35) | a) hanging | b) pending | c) awaiting | d) standing out |

The proceedings before the German courts

There have been two **(36)** of proceedings in Germany.

- | | | | | |
|------|---------|----------|---------|-------------|
| (36) | a) lots | b) packs | c) sets | d) clusters |
|------|---------|----------|---------|-------------|

The first concerned Mr Aguirre Zarraga's application for the return of his daughter to Spain, brought on the basis of the 1980 Hague Convention. That application was initially **(37)** by the Amtsgericht Celle (Celle Local Court) by judgment **(38)** 30 January 2009.

- | | | | | |
|------|-----------|------------|--------------|--------------|
| (37) | a) upheld | b) held up | c) sustained | d) supported |
| (38) | a) in | b) of | c) on | d) at |

Ms Pelz brought an appeal against that judgment. By judgment of 1 July 2009 the Oberlandesgericht Celle (Celle Higher Regional Court) upheld that appeal, consequently **(39)** the judgment of 30 January 2009 and **(40)** Mr Aguirre Zarraga's application on the basis of the second paragraph of Article 13 of the 1980 Hague Convention.

- | | | | | |
|------|--------------|--------------|-----------------|-----------------|
| (39) | a) set aside | b) put aside | c) placed aside | d) turned aside |
| (40) | a) repelled | b) declined | c) dismissed | d) discarded |

The Oberlandesgericht Celle stated in particular that, when Andrea was heard by that court, it had been shown that she was resolutely opposed to the return requested by her father; she refused categorically to return to Spain. The expert **(41)** by that court concluded following the hearing that Andrea's opinion should be taken into account in the **(42)** of both her age and her maturity.

- | | | | | |
|------|-----------|-----------|-------------|---------------|
| (41) | a) hired | b) chosen | c) informed | d) instructed |
| (42) | a) vision | b) sight | c) light | d) view |

The second set of proceedings before the German courts was initiated by the issue of a certificate on 5 February 2010 by the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao pursuant to Article 42 of Regulation No 2201/2003 on the basis of the divorce **(43)** which it had issued on 16 December 2009, when that court had also made an order relating to rights of custody in respect of Andrea.

- | | | | | |
|------|-----------|----------|-----------|-------------|
| (43) | a) ruling | b) order | c) decree | d) judgment |
|------|-----------|----------|-----------|-------------|

By letter of 26 March 2010 the Bundesamt für Justiz (Federal Office of Justice) sent to the court with **(44)** in the Federal Republic of Germany, namely the Amtsgericht Celle, that judgment and certificate. That authority drew the court's attention to the fact that, under Article 44(3) of the law on the enforcement and application of certain legal **(45)** in matters of international family law (*Gesetz zur Aus- und Durchführung bestimmter Rechtsinstrumente auf dem Gebiet des internationalen Familienrechts*), the judgment of the Spanish court ordering the return of the child fell to be enforced by operation of law.

(44) a) jurisdiction b) competence c) powers d) discretion

(45) a) tools b) appliances c) gadgets d) instruments

Ms Pelz objected to the enforcement of that certified judgment, requesting that it not be recognised.

By judgment of 28 April 2010 the Amtsgericht Celle **(46)** that the judgment of the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao was neither to be **(47)** nor enforced, on the ground that the Spanish court had not heard Andrea before handing down its judgment.

(46) a) stated b) affirmed c) held d) understood

(47) a) recognised b) admitted c) noticed d) applied

On 18 June 2010 Mr Aguirre Zarraga brought an appeal against that judgment before the Oberlandesgericht Celle, requesting that the judgment be set aside, that the **(48)** of Ms Pelz be dismissed and that the judgment of the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao of 16 December 2009 be enforced by operation of law as an order to return Andrea to her father.

(48) a) complaints b) claims c) pleads d) pleadings

Although the Oberlandesgericht Celle accepts that the court of the Member State of enforcement of a certificate issued in accordance with Article 42 of Regulation No.2201/2003 has, as a general rule, no power of **(49)** itself under Article 21 of that Regulation, the Oberlandesgericht Celle none the less considers that it should be **(50)** where there is a particularly serious infringement of a fundamental right.

(49) a) revision b) review c) survey d) inspection

(50) a) contrarily b) unlike c) opposite d) otherwise

In that regard, the referring court makes two observations: that the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao did not obtain Andrea's current views and was therefore unable to take account of those views in its judgment of 16 December 2009 concerning, inter alia, rights of custody in respect of that child; and that the efforts made by the Spanish court to hear Andrea were **(51)** given the importance attached to taking into account the child's views in Article 24(1) of the Charter of Fundamental Rights.

(51) a) inadequate b) inappropriate c) lacking d) improper

Further, the Oberlandesgericht Celle wonders whether, in a case where, notwithstanding such an infringement of a fundamental right, the court of the Member State of enforcement lacks any power of review, that Member State can be **(52)** by a certificate, issued under Article 42 of Regulation No.2201/2003, the contents of which are manifestly false. According to the referring court, the certificate of the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao of 5 February 2010 contains a declaration which is manifestly false in that it states that Andrea was heard by that Spanish court, **(53)** she was not.

(52) a) obliged b) bound c) compelled d) tied

(53) a) if b) whereas c) wherever d) unless

In those circumstances, the Oberlandesgericht Celle decided to **(54)** the proceedings and to refer the following questions to the Court for a preliminary ruling:

(54) a) stop b) halt c) pause d) stay

1. Where the judgment to be enforced issued in the Member State of origin contains a serious infringement of fundamental rights, does the court of the Member State of enforcement exceptionally itself enjoy a power of review, pursuant to an interpretation of Article 42 of [Regulation No.2201/2003] in conformity with the Charter of Fundamental Rights?

2. Is the court of the Member State of enforcement obliged to enforce the judgment of the court of the Member State of origin notwithstanding the fact that, according to the case-file, the certificate issued by the court of the Member State of origin under Article 42 of [Regulation No.2201/2003] contains a declaration which is manifestly inaccurate?' [...]

Consideration of the questions referred for a preliminary ruling

By the questions referred for a preliminary ruling, which should be dealt with together, the referring court asks, in essence, whether, in circumstances such as those in the main proceedings, the court with jurisdiction in the Member State of enforcement can exceptionally oppose the enforcement of a judgment ordering the return of a child, which has been certified on the basis of Article 42 of Regulation No.2201/2003 by the court of the Member State of origin, on the ground that the latter court stated, in the certificate, that it had fulfilled its obligation to hear the child before handing down its judgment, in the context of divorce proceedings, on the award of rights of custody in respect of that child, although that hearing did not take place, which is contrary to the said Article 42, interpreted in accordance with Article 24 of the Charter of Fundamental Rights.

In order to answer those questions, it must first be recognised that what is at issue, in a context such as that of the main proceedings, is wrongful retention of a child within the meaning of Article 2(11) of Regulation No.2201/2003. [...]

On those grounds, the Court (First Chamber) hereby rules:

In circumstances such as those of the main proceedings, the court with jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 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, interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin.

II. EXPLAIN THE FOLLOWING WORDS OR PHRASES.

1. [...] both parties brought divorce proceedings before the Spanish courts
 2. the court granted rights of access
 3. that court handed down a fresh judgment
 4. the failure by a duly notified party to attend voluntarily a first instance hearing
 5. the court of the Member State of enforcement lacks any power of review
 6. to stay the proceedings
-

III. EXPLAIN (GIVING SYNONYMS IF POSSIBLE) THE UNDERLINED EXPRESSIONS IN THE PARAGRAPH ENTITLED “CONSIDERATION OF THE QUESTIONS REFERRED FOR A PRELIMINARY RULING” (LINES 191-203).

1. in essence
 2. exceptionally
 3. on the basis of
 4. the latter court
 5. contrary to
 6. what is at issue
 7. within the meaning of Article 2(11) of Regulation No.2201/2003
-

IV. REPHRASE THE FOLLOWING FRAGMENTS, USING YOUR OWN WORDS.

1. That report stated that custody should be awarded to the father, since he was best placed to ensure that the family, school and social environment of the child was maintained.
2. In July 2009 the proceedings in relation to rights of custody in respect of Andrea were continued before the same court.
3. The court considered that it was necessary both to obtain a fresh expert report and to hear Andrea personally and fixed dates for both in Bilbao. However, neither Andrea nor her mother attended on those dates.
4. By judgment of 16 December 2009 the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao awarded sole rights of custody in respect of Andrea to her father. Ms Pelz brought before the Audiencia Provincial de Bizkaya (Biscay Provincial Court) an appeal against that judgment which included the request that Andrea be heard.
5. By judgment of 21 April 2010 the Audiencia Provincial dismissed that request on the ground that, according to Spanish rules of procedure, the production of evidence on appeal is possible only in certain circumstances expressly defined by legislation.
6. On 18 June 2010 Mr Aguirre Zarraga brought an appeal against that judgment before the Oberlandesgericht Celle, requesting that the judgment be set aside, that the claims of Ms Pelz be dismissed and that the judgment of the Juzgado de Primera Instancia e Instrucción No.5 de Bilbao of 16 December 2009 be enforced by operation of law as an order to return Andrea to her father.

V. ANSWER THE FOLLOWING QUESTIONS.

1. What court refers questions for a preliminary ruling?
2. Who was granted rights of access?
3. Which are the questions referred for a preliminary ruling?
4. What topics and European instruments are involved in this judgment?
5. What did the CJEU rule?

B. FURTHER LANGUAGE PRACTICE

I. PROVIDE THE ANTONYMS OF THE WORDS IN BRACKETS.

1. In case of (rightful) removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately (after) the removal or retention (lose) their jurisdiction until the child has acquired a habitual residence in another State.
2. The provisions of the (following) paragraph shall not apply if the authorities before whom the request for measures was initially introduced have (accepted) jurisdiction.
3. Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is (absent) have jurisdiction to take measures of a (permanent) character for the protection of the person or property of the child which have a territorial effect (extended) to the State in question [...].
4. The authorities of a Contracting State which (lack) jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the (cessation) of the proceedings, corresponding measures have been requested from the authorities of another Contracting State (lacking) jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.
5. The parental responsibility referred to in Article 16 may be (initiated), or the conditions of this exercise modified, by measures taken under this Convention.
6. The application of the law designated by the provisions of this Chapter can be (accepted) only if this application would be manifestly (in accordance with) public policy, taking into account the best interests of the child.
7. Recognition may however be (accepted) [...] on the request of any person claiming that the measure (respects) his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard.
8. The Central Authority of a Contracting State, either directly or through (private) authorities or other bodies, shall take all appropriate steps to [...] (hinder) the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter.

II. LISTENING COMPREHENSION: IN THE MATTER OF LC (CHILDREN). FILL IN THE GAPS.

[Source: <https://www.youtube.com/watch?v=DybjDDhtVdU>]

In the matter of LC (Children); In the matter of LC (Children) (No 2) [2014] UKSC 1 On appeal from [2013] EWCA Civ 1058 (15 January 2014)

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Sumption, Lord Toulson and Lord Hodge

Lord Wilson will _____ the decision of the Court.

Sometimes a court needs to determine whether a child's residence in a country was _____. How relevant to that _____ is the child's own state of mind while _____?

The appeals _____ four children, namely T, a girl now aged 13, and three boys now aged 11, 9 and 5.

Until July 2012 they lived with their British father and their Spanish mother in England. The parents' marriage broke down and in July 2012, with the father's _____, the mother took the _____ to live in Spain. They lived there until December 2012 when they returned to England to spend Christmas with their father. They were supposed to return to Spain on 5 January 2013 but the two older boys _____ their passports, the plane was missed and all four children have _____ here ever since.

The mother _____ brought proceedings here _____ to the Hague Convention 1980 for an order for the immediate _____ of the children to Spain. The first question for the judge was whether they had _____ a habitual residence in Spain during those five months. He decided that they had, and therefore that _____ for the father to retain them in England after 5 January. He went on to decide that none of the _____ exceptions to the court's obligation to return the children to Spain applied so he _____ that all of them should go back there.

The father and T appealed. The Court of Appeal disagreed with the judge on only one point. It decided that, in the light of the _____ of her objections to returning to Spain, it was not appropriate to send T back to Spain. That _____ the possibility that another exception might apply in relation to the boys for if they went back it would now be without T, so would that place them in an _____ situation?

The court _____ that question to the judge, who has not yet determined it.

The father and T, supported by the two _____ boys, now appeal to this Court. They argue that none of the four children ever acquired habitual residence in Spain and that the mother's application should have been _____ on that basis.

The basis for the dismissal _____ because unless it was that they were not habitually resident in Spain on 5 January 2013, the Spanish courts could still in _____ order the children back and the English court would have to _____. That is the effect of Article 11.8 of a European Council Regulation dated 27 November 2003.

Today this Court _____ sets aside the judge's conclusion that the children were habitually resident in Spain on 5 January and _____ a fresh determination to be made of that

..... Prior to the hearing before the judge a Caffass officer interviewed T and the two older boys. The was that they, particularly T, did not want to go back to Spain. In the course of the interviews they, again particularly T, made comments about their life in Spain in 2012 which, on one view, and if taken at face value indicated that they had not felt there.

It has recently been established, both at a European and at a level that a person is habitually resident in a country if he or she has achieved some degree of in a social and family there. The consequence is, as this Court unanimously, that a child's state of mind during a period of residence in a country will sometimes be relevant to whether he or she was integrated in that environment and to whether the residence was habitual.

At this point however a difference of arises among the five Three of us consider that it is principally the state of mind only of an child, in the case therefore only of T, which might be relevant. They are whether the state of mind of, in this case, the two older boys could, alone, the judge's conclusion about their habitual residence. Their conclusion that the judge should the habitual residence of the three boys, as well as of T, is on a different, namely that, in the light of the apparent of all four children, T's continued habitual residence in England, if such it to have been, might impact on the habitual residence of the boys. But the two others of us would have that the state of mind of younger children, say - children, can in principle be as relevant as that of adolescent children to their habitual residence. So they would have been prepared to the judge's possible attachment of greater to the state of mind of the two older boys while resident in Spain, even though they were then aged only 10 and 8.

Thank you. The court is now

III. CHOOSE THE RIGHT CONNECTIVE WORD OR PHRASE.

[Source: *The Hague Convention on the Civil Aspects of International Child Abduction*]

1. a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State or to the applicant, as the case may be.
a) whether b) if c) even if d) unless
2. The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child it is demonstrated that the child is now settled in its new environment.
a) even if b) whether c) only if d) unless
3. the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.
a) whether b) where c) wherever d) unless
4. The judicial or administrative authority may also refuse to order the return of the child
.....

- a) unless b) even if c) if d) whether
it finds that the child objects to being returned and has attained an age and degree of maturity... it is appropriate to take account of its views.
- a) which b) to which c) in which d) at which
5. In ascertaining there has been a wrongful removal or retention within the meaning of Article 3,
a) whether b) when c) where d) how
the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial and administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions would otherwise be applicable.
- a) who b) whom c) which d) whose
6. Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person removed or retained the child,
a) which b) who c) whom d) to whom
or prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant [...].
- a) who b) which c) whose d) whom
7. it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application.
a) whether b) when c) whenever d) wherever
8. Nothing in this Convention shall prevent two or more Contracting States, limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.
a) so to b) as to c) in order to d) for

IV. INSERT THE CORRECT PREPOSITION.

at, before, by, from, in, into, of, on, through, to, under, with, without

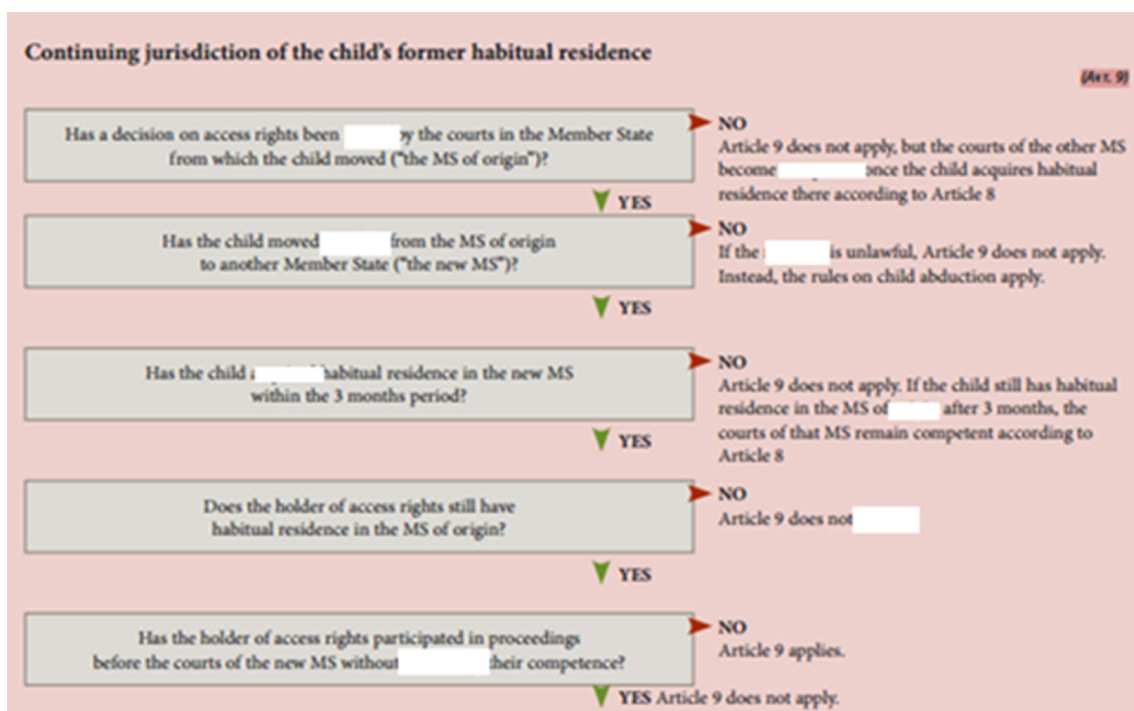
- The removal or retention of a child is to be considered wrongful where it is breach rights of custody attributed a person, an institution or any other body, either jointly or alone, the law in which the child was habitually resident immediately before the removal or retention.
- If the Central Authority which receives an application referred in Article 8 has reason to believe that the child is another Contracting State, it shall directly and delay transmit the application the Central Authority of that Contracting State [...].
- A decision this Convention concerning the return of the child shall not be taken to be a determination the merits of any custody issue.

4. The Central Authorities, either directly or intermediaries, may initiate or assist the institution of proceedings with a view organising or protecting these rights and securing respect for the conditions which the exercise of these rights may be subject.
5. A Contracting State may, by making a reservation in accordance Article 42, object the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.
6. A Central Authority may require that the application be accompanied a written authorisation empowering it to act behalf the applicant, or to designate a representative so to act.
7. Where a child has been wrongfully removed or retained terms of Article 3 and, the date of the commencement of the proceedings the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.
8. considering the circumstances referred in this Article, the judicial or administrative authorities shall take account the information relating the social background of the child provided the Central Authority or other competent authority of the child's habitual residence.

V. COMPLETE THE FOLLOWING FLOW CHART ON CHILD ABDUCTION JURISDICTION WITH THE WORDS GIVEN.

[Source: <https://e-justice.europa.eu/fileDownload.do?id=98eb296c-a790-4feb-8001-5a990b513521>]

acquired, apply, competent, contesting, issued, lawfully, origin, removal



UNIT 5

MAINTENANCE: JURISDICTION, APPLICABLE LAW, RECOGNITION AND ENFORCEMENT

INTRODUCTION

Francisco de Paula Puig Blanes

This area of Family Law is covered by Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. It is applicable in all 27 EU Member States to all legal proceedings instituted, court settlements approved or concluded, and authentic instruments established as from 18 June 2011.

In relation to the United Kingdom, as far as jurisdiction is concerned, it is applicable to legal proceedings instituted before 31.12.2020. In relation to recognition and enforcement, it is to be applied to judgments given in legal proceedings instituted before 31.12.2020 and to authentic instruments formally drawn up and court settlements approved or concluded before 31.12.2020.

Before Regulation 4/2009, maintenance fell within the scope of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (and before it within that of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters). Due to this, Regulation 4/2009 has a transitional provision that provides that its rules on recognition and enforcement can be applied to decisions given after the date of its application (18.06.2011) following proceedings begun before that date, in so far as those decisions fall with the scope of Regulation (EC) No 44/2001 for the purposes of recognition and enforcement. In all other situations, Regulation (EC) No 44/2001 continues to apply to procedures for recognition and enforcement under way on the date of application of Regulation 4/2009.

Regulation 5/2009 provides no concept of "maintenance obligation" as it only states that its scope covers all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to guarantee equal treatment of all maintenance creditors. For the purposes of the Regulation, the term 'maintenance obligation' should be interpreted autonomously.

Due to this, in some cases a preliminary ruling question has been submitted before the Court of Justice. In its judgment CJEU C120/79 Cavel, 6 March 1980 (the instrument analysed was the 1968 Brussels Convention), the Court was asked whether a monthly maintenance allowance and an interim compensation payment awarded in the course of a divorce proceedings was a maintenance obligation. The Court clarified that "... 'compensatory payments' provided for in article 270 et seq.

of the French civil code [...] are concerned with any financial obligations between former spouses after divorce which are fixed on the basis of their respective needs and resources and are equally in the nature of maintenance”.

This notion was developed by its judgment CJEC C-220/95 Van den Boogard, 27 February 1997, which dealt with a case related to the recognition of a decision rendered in divorce proceedings and ordering payment of a lump sum and transfer of ownership by one party to his/her former spouse. In this decision the Court of Justice, also interpreting the notion of maintenance in the 1968 Brussels Convention, indicated that such decision can be considered as being concerned with maintenance if, having regard to the specific aim of the decision rendered, it can be shown that “the provision awarded is designed to enable one spouse to provide for himself or herself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount”. The Court further held that: “On the other hand, where the provision awarded is solely concerned with dividing property between the spouses, the decision will be concerned with rights in property arising out of a matrimonial relationship”.

1. JURISDICTION

Jurisdiction rules included in Regulation 4/2009 cover all situations leaving no role to national rules on international jurisdiction (in other instruments they can be applied residually in the situations so provided).

Jurisdiction can be chosen or accepted by the parties under certain requirements, providing Regulation 4/2009 rules when there is no choice or acceptance of jurisdiction by the parties.

1.1. Choice/Acceptance of court by the parties (prorogation of jurisdiction)

This option foreseen in Art 4 is not applicable to a dispute relating to a maintenance obligation towards a child under the age of 18. It must be done in writing (a communication by electronic means which provides a durable record of the agreement is considered as being equivalent to writing).

The parties cannot choose any court they consider, as the choice can only be made among courts that have a link with the parties. They may be (the conditions need to be met at the time of conclusion of the choice of court agreement):

- the court or the courts of a Member State in which one of the parties is habitually resident;
- a court or the courts of a Member State of which one of the parties has the nationality;
- in the case of maintenance obligations between spouses or former spouses:
 - the court which has jurisdiction to settle their dispute in matrimonial matters; or
 - a court or the courts of the Member State which was the Member State of the spouses’ last common habitual residence for a period of at least one year.

The notion of ‘habitual residence’ is not included in Regulation 4/2009, but there is a rich corpus of case law on this notion within the context of the Brussels II bis Regulation. Due to this, the criteria to define what can be considered as habitual residence in these cases can be taken into consideration within the framework of Regulation 4/2009 even though with care and bearing in mind its specificities.

In addition to that, jurisdiction can also be set (Art 5) in favour of a Court of a Member State before which a defendant enters an appearance (not objecting to jurisdiction)

1.2. General Jurisdiction

If there is no prorogation of jurisdiction (or in cases where this is not possible), the general rules set in Article 3 are the ones to apply.

They provide different alternatives that have a specificity not foreseen in other Regulations and that is no other than the Regulation not only sets rules that indicate the Court of the Member State having jurisdiction, but also indicate which Court within that State is the one having jurisdiction.

Thus, and according to Article 3, in matters relating to maintenance obligations jurisdiction lies with:

- (a) the court for the place where the defendant is habitually resident, or
- (b) the court for the place where the creditor is habitually resident (in the case of maintenance related to children the habitual residence refers to that of the child as it is the child who is the creditor and not the parent to whom the amount of the maintenance is to be paid), or
- (c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
- (d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

In situations where child abduction takes place, as the creditor (the child) has the habitual residence in the new State (Regulation Brussels II bis refers to set jurisdiction in favour of the courts from where the child was abducted as the courts of the “former” habitual residence of the child “as habitually resident” – Art 10), a question may arise on whether the courts of the new habitual residence may have jurisdiction even though it is based on a situation of child abduction. This question was submitted before the Court of Justice that solved it in Order CJEU C85/18 PPU CV – DU of 10 April 2018, where the court stated that: “Article 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, and Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, must be interpreted as meaning that, in a case such as that at issue in the main proceedings, in which a child who was habitually resident in a Member State was wrongfully removed by one of the parents to another Member State, the courts of that other Member State do not have jurisdiction to rule on an application relating to custody or the determination of a maintenance allowance with respect to that child, in the absence of any indication that the other parent consented to his removal or did not bring an application for the return of that child”.

The concept “creditor” also includes a public body subrogated to the claims of a maintenance creditor. This was the case solved in judgment CJEU C540/19 *WV v Landkreis Harburg* of 17 September 2020, where the court decided that: “A public body which seeks to recover, by way of an action for recovery, sums paid in place of maintenance to a maintenance creditor, and to which the claims

of that maintenance creditor against the maintenance debtor have been transferred by way of subrogation, may validly invoke the jurisdiction of the court for the place where the creditor is habitually resident, as provided in Article 3(b) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations”.

Another question that arose in relation to the two last rules is that of setting in relation to what maintenance is ancillary in divorce cases where there are also requests on parental responsibility and maintenance towards children. This question was solved in Judgment CJEU C-184/14 A v B 16 July 2015 where the court stated that: “Article 3(c) and (d) of Regulation No 4/2009 must be interpreted as meaning that, where a court of a Member State is seised of proceedings involving the separation or dissolution of a marital link between the parents of a minor child and a court of another Member State is seised of proceedings in matters of parental responsibility involving the same child, an application relating to maintenance concerning that child is ancillary only to the proceedings concerning parental responsibility, within the meaning of Article 3(d) of that regulation”.

This judgment has been completed by judgment CJEU C-468/18 R P of 5 September 2019, as it solves the question in situations where all criteria are to be applied by different Courts. In its decision the Court said that: “Article 3(a) and (d) and Article 5 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations must be interpreted as meaning that where there is an action before a court of a Member State which includes three claims concerning, respectively, the divorce of the parents of a minor child, parental responsibility in respect of that child and the maintenance obligation with regard to that child, the court ruling on the divorce, which has declared that it has no jurisdiction to rule on the claim concerning parental responsibility, nevertheless has jurisdiction to rule on the claim concerning the maintenance obligation with regard to that child where it is also the court for the place where the defendant is habitually resident or the court before which the defendant has entered an appearance, without contesting the jurisdiction of that court”.

If jurisdiction was set by the ancillary criteria, they cannot be applied in relation to applications to modify that judgment. This question was submitted before the Court of justice that in its judgment CJEU Case C-499/15 W, V v Z of 15 February 2017 stated that whenever a court of a Member State has delivered a final judgment on parental responsibility and maintenance obligations with regard to a minor, that court will no longer have jurisdiction to hear an application to modify that judgment if the child’s habitual residence is no longer in that Member State. In such a case, jurisdiction lies with the courts of the Member State to which the child has been relocated and is now habitually resident.

In relation to maintenance modification procedures, Article 8 sets a special rule by stating that where a decision is given in a Member State or a 2007 Hague Convention Contracting State where the creditor is habitually resident, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given unless (a) the parties have agreed on jurisdiction in accordance with Article 4 to the jurisdiction of the courts of that other Member State; (b) the creditor submits to the jurisdiction of the courts of that other Member State pursuant to Article 5 (appearance without objecting jurisdiction); (c) where the competent authority in the 2007 Hague Convention Contracting State of origin cannot, or refuses to, exercise jurisdiction to modify

the decision or give a new decision; or (d) where the decision given in the 2007 Hague Convention Contracting State of origin cannot be recognised or declared enforceable in the Member State where proceedings to modify the decision or to have a new decision given are contemplated.

1.3. Additional jurisdiction rules

If no court of a Member State has jurisdiction based upon the previous rules, Regulation 4/2009 grants it to the Courts of the common nationality of the parties (Article 6) and in cases where they have a different nationality a *forum necessitatis* rule is set by Article 7 that states that courts of a Member State may, on an exceptional basis, hear the case if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected. The dispute must have a sufficient connection with the Member State of the court seised.

1.4. Criteria to implement jurisdiction rules

Regulation 4/2009 states that courts have to examine jurisdiction on their own motion (Art 10).

It also provides rules on *lis pendens* and related actions. In situations of *lis pendens* (Art 12) the Court second seised on its own motion shall stay until jurisdiction of the court first seised is established. In situations of related actions (art 13) this is set as only an option as the verb used by the Regulation is not “shall” (*lis pendens*) but “may” (related actions).

1.5. Provisional measures

Jurisdiction to take provisional measures belongs to the court having under any of the criteria mentioned above.

However, in addition to that, Article 14 enables a court of a Member State not having jurisdiction on the substance of the maintenance case to take provisional measures on maintenance if such measure is available under the law of that State. This article does not make the provisional measure dependent on the requirement of urgency, but due to the nature of the topic concerned (maintenance), it may be considered as also an urgent question.

2. APPLICABLE LAW

Regulation 4/2009 does not include rules on applicable law but refers to the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations and only in relation to the Member States bound by that instrument. They are all EU Member States except Denmark (and also the United Kingdom in cases started before the 31.12.2020). This means that Denmark (and the UK) are not to apply the rules explained below.

The Hague Protocol 2007 has also no concept of maintenance, but it states that the law applicable determines: (a) whether, to what extent and from whom the creditor may claim maintenance; (b) the extent to which the creditor may claim retroactive maintenance; (c) the basis for calculation of the amount of maintenance, and indexation; (d) who is entitled to institute maintenance proceedings, except for issues relating to procedural capacity and representation in the proceedings; (e) prescription or limitation periods; (f) the extent of the obligation of a maintenance debtor, where a public body seeks reimbursement of benefits provided for a creditor in place of maintenance.

Applicable rules under this Convention are based on the principle of universality (Art 2) which stated that it is to be applied even if the applicable law is that of a non-Contracting State.

The protocol excludes renvoi (Art 12) and has a rule on public policy (Art 13) that enables the refusal to apply the law set by the Protocol to the extent that its effects would be manifestly contrary to the public policy of the forum.

It also provides a general rule for the determination of the amount of maintenance (Art 14) even if the applicable law provides otherwise. This rule implies that the needs of the creditor and the resources of the debtor as well as any compensation which the creditor was awarded in place of periodical maintenance payments shall be taken into account in determining the amount of maintenance.

2.1. Criteria for setting the applicable law: Designation of applicable law

This is the first criterion to apply (Art 8) but not to maintenance obligations in respect of a person under the age of 18 years or of an adult who, by reason of an impairment or insufficiency of his or her personal faculties, is not in a position to protect his or her interest.

The agreement shall be in writing or recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference, and shall be signed by both parties.

In relation to the law that can be chosen, not all are accepted, but only those who have a special link with the parties. The laws that can be chosen are: (a) the law of any State of which either party is a national at the time of the designation; (b) the law of the State of the habitual residence of either party at the time of designation; (c) the law designated by the parties as applicable, or the law in fact applied, to their property regime; (d) the law designated by the parties as applicable, or the law in fact applied, to their divorce or legal separation.

2.2. Criteria for setting the applicable law: General Rule

The general rule on the applicable law to maintenance obligations is set by Article 3 of the Protocol. That law is that of the State of the habitual residence of the creditor, save where the Protocol provides otherwise (special rules of Articles 4 and 5 to be mentioned later). If the habitual residence of the creditor changes, the law of the State of the new habitual residence applies as from the moment when the change occurs.

2.3. Criteria for setting the applicable law: Special rules for certain creditors

As has been said before, the general rule on the habitual residence of the creditor applies if no special provisions are set by the Protocol.

One of those special rules refers to maintenance obligation between spouses, ex-spouses or parties to a marriage which has been annulled. In this situation (Art 5) the rule of the habitual residence of the creditor is not to be applied if one of the parties objects and the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage. In such a case the law of that other State is the one to apply.

The other special rule (Art 4) refers to certain creditors that need to be favoured. They refer to maintenance obligations of: (a) parents towards their children; (b) persons, other than parents, towards persons who have not attained the age of 21 years, except for obligations arising out of the relationships referred to in Article 5 (spouses, ex-spouses or parties to a marriage which has been annulled); and (c) children towards their parents.

In these situations, and to protect the creditor, the Protocol states that if the creditor is unable, by virtue of the law referred to in Article 3 (habitual residence of the creditor), to obtain maintenance from the debtor, the law of the forum shall apply. Notwithstanding the applicable law that of the habitual residence of the creditor, if the creditor has seised the competent authority of the State where the debtor has his habitual residence, the law of the forum shall apply. However, if the creditor is unable, by virtue of this law, to obtain maintenance from the debtor, the law of the State of the habitual residence of the creditor shall apply. Finally, if the creditor is unable, by virtue of the laws referred to above (habitual residence of creditor of forum) to obtain maintenance from the debtor, the law of the State of their common nationality, if there is one, is the one to apply.

This last rule is quite complex and Judgment CJEU C-83/17 KP LO of 7 June 2018 states that:

- "... the fact that the State of the forum corresponds to the State of the creditor's habitual residence does not preclude the application of that provision as long as the law designated by the ancillary connecting rule in that provision does not coincide with the law designated by the main connecting rule in Article 3 of that Protocol;
- in a situation in which the maintenance creditor, who has changed his habitual residence, has brought before the courts of the State of his new habitual residence a maintenance claim against the debtor in respect of a period in the past during which the creditor resided in another Member State, the law of the forum, which is also the law of the State of the creditor's new habitual residence, can apply provided the courts of the Member State of the forum had jurisdiction to adjudicate on the disputes concerning those parties as to the maintenance relating to that period."

2. The phrase 'is unable ... to obtain maintenance' in Article 4(2) of the Hague Protocol of 23 November 2007 must be interpreted as also covering the situation in which the creditor is unable to obtain maintenance under the law of the State of his previous habitual residence on the ground that he does not meet certain conditions imposed by that law".

The need to apply Article 4 in a maintenance obligation case does not imply that all additional cases (modification of maintenance requests) will need also to apply this rule. This has been clarified in judgment CJEU C-214/17, *Alexander Mölk v Valentina Mölk*, of 20 September 2018 where the court stated that: "On a proper construction of Article 4(3) of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, approved on behalf of the European Community by Council Decision 2009/941/EC of 30 November 2009, the result of a situation such as that at issue in the main proceedings, where the maintenance to be paid was set by a decision, which has acquired the force of *res judicata*, in response to an application by the creditor and, pursuant to Article 4(3) of that protocol, on the basis of the law of the forum designated under that provision, is not that that law governs a subsequent application for a reduction in the amount of maintenance lodged by the debtor against the creditor with the courts of the State where that debtor is habitually resident".

3. RECOGNITION AND ENFORCEMENT

Regulation 4/2009 sets a different system based on where the decision was given (not where it is to be enforced) and in particular if they are Member States bound by the 2007 Hague Protocol or not. As mentioned above, they are all EU Member States except Denmark (and also the United Kingdom in cases started before the 31.12.2020).

The system for enforcing judgments given by Danish and UK Courts (in this last case those given in

legal proceedings instituted before 31.12.2020 and authentic instruments formally drawn up and court settlements approved or concluded before 31.12.2020), the system foreseen (and included in arts 23-43 of Regulation 4/2009) is similar to that of Regulation 44/2001 (Brussels I) and is to apply in all Member States when recognition and enforcement refers to a decision taken in Denmark (or the UK until applicable). The new system set by Regulation 4/2009 (Arts 17- 22) is foreseen for decisions taken in all the other 26 Member States (even though they are to be enforced in Denmark).

3.1. Recognition and enforcement decisions taken in Denmark (and UK until applicable)

It is based on the principle of automatic recognition (Art 23).

The grounds for non-recognition (Art 24) are: if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought; where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so; if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought; if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Enforcement requires a previous declaration of enforceability (this is the main difference with the other procedure for enforcement). Regulation 4/2009 sets the documents that need to be provided, enforcement being ruled by the law of the State of Enforcement.

Once the declaration of enforceability is obtained (this is to be done immediately on completion of the formalities and provision of the documentation set by Regulation 4/2009), it may be subject to appeal to be lodged within 30 days of service, but if the party against whom enforcement is sought has his or her habitual residence in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 45 days and shall run from the date of service.

The Regulation also foresees that the court with which an appeal is lodged shall stay the proceedings, on the application of the party against whom enforcement is sought, if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Provisional and protective measures are also foreseen (Art 36) and the possibility of a partial declaration of enforceability (Art 37).

3.2. Recognition and enforcement of decisions taken in all the other 26 Member States

In relation to them, the main principle is that of the abolition of exequatur (Art 17) which implies in relation to recognition that the decision is to be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition.

In relation to enforcement this means that it is enforceable without the need for a declaration of enforceability.

The possible review of the decision is to be done in the country of origin (review – Art 19) and only based on these grounds to be submitted by the defendant: (a) the defendant was not served with the document instituting the proceedings or an equivalent document in sufficient time and in

such a way as to enable him to arrange for his defence; or (b) the defendant was prevented from contesting the maintenance claim by reason of force majeure or due to extraordinary circumstances without any fault on his part; unless he failed to challenge the decision when it was possible for him to do so.

The time limit for applying for a review shall run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his property non-disposable in whole or in part. The defendant shall react promptly, in any event within 45 days. No extension may be granted on account of distance.

In relation to the enforcement Court, Regulation 4/2009 sets the documents that need to be provided (Art 20) and applies its own law on enforcement (unless it is incompatible with the Regulation). It shall, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if the right to enforce the decision of the court of origin is extinguished by the effect of prescription or the limitation of action, either under the law of the Member State of origin or under the law of the Member State of enforcement, whichever provides for the longer limitation period.

It may also, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if it is irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member State of enforcement.

In addition to that, the competent authority in the Member State of enforcement may, on application by the debtor, suspend, either wholly or in part, the enforcement of the decision of the court of origin if the competent court of the Member State of origin has been seised of an application for a review of the decision of the court of origin as mentioned above. It shall also, on application by the debtor, suspend the enforcement of the decision of the court of origin where the enforceability of that decision is suspended in the Member State of origin.

3.3. Common rules

Regulation 4/2009 foresees common rules for both systems of enforcement in relation to provisional enforceability (art 39), conditions of enforcement that are to be ruled by the law of the State of enforcement (art 41), no review of substance (Art 42) and legal aid (Arts 44-46).

In relation to conditions of enforcement, the enforcement court is also the one that needs to analyse the grounds for non-enforcement (such as the payment of the debt). This has been the object of Judgment CJEU C-41/19, *FX and GZ*, of 4 June 2020 where the court said that: "Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations is to be interpreted as meaning that an application opposing enforcement brought by the maintenance debtor against enforcement of a decision given by a court of the Member State of origin and which established that debt, which has a close link with the procedure for enforcement, falls within its scope and is within the international jurisdiction of the courts of the Member State of enforcement.

Pursuant to Article 41(1) of Regulation No 4/2009 and to the relevant provisions of national law, it is for the referring court, being a court of the Member State of enforcement, to adjudicate on the admissibility and the validity of the evidence adduced by the maintenance debtor, seeking to support the submission that he has predominantly discharged his debt".

3.4. Authentic documents and court settlements

Court settlements and authentic instruments (they may include mediation agreements) which are enforceable in the Member State of origin shall be recognised in another Member State and be enforceable there in the same way as decisions (Art 48).

4. ROLE OF CENTRAL AUTHORITIES

Due to the nature of maintenance obligations, and the need to protect the creditor, central authorities play an essential role in easing all aspects related both to the setting of a maintenance obligation and its recognition and enforcement.

This role is also set by Regulation 4/2009 and includes besides general functions such as the promotion of cooperation, exchange of information and solution of difficulties (Art 50), also special functions related to provision of assistance. They can be of any nature and Article 51 includes some of them (it is a non-closed enumeration as when the Regulation refers to them it employs the term “in particular”). The functions set by the Regulation are:

- to transmit and receive applications from the creditor (or person that considers him/herself creditor) for:
 - recognition or recognition and declaration of enforceability of a decision;
 - enforcement of a decision given or recognised in the requested Member State;
 - establishment of a decision in the requested Member State where there is no existing decision, including where necessary the establishment of parentage;
 - establishment of a decision in the requested Member State where the recognition and declaration of enforceability of a decision given in a State other than the requested Member State is not possible;
 - modification of a decision given in the requested Member State;
 - modification of a decision given in a State other than the requested Member State.
- to transmit and receive applications from the debtor against whom there is an existing maintenance decision may on:
 - recognition of a decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested Member State;
 - modification of a decision given in the requested Member State;
 - modification of a decision given in a State other than the requested Member State.
- to initiate or facilitate the institution of proceedings in respect of such applications.
- where the circumstances require, to provide or facilitate the provision of legal aid;
- to help locate the debtor or the creditor;
- to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor;
- to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
- to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
- to facilitate the collection and expeditious transfer of maintenance payments;

- to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001 (service of documents);
- to provide assistance in establishing parentage where necessary for the recovery of maintenance;
- to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;
- to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007 (taking of evidence).

LANGUAGE EXERCISES

A. READING COMPREHENSION

I. READ THE FOLLOWING TEXT ON MAINTENANCE CLAIMS IN GREECE AND MATCH THE QUESTIONS WITH THE APPROPRIATE PARAGRAPH.

(Source: European e-Justice Portal - Family maintenance (europa.eu))

- (1) Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?
- (2) How and to whom will the maintenance be paid?
- (3) If I plan to bring the case to court, how do I know which court has jurisdiction?
- (4) Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?
- (5) Up to what age can a child benefit from a maintenance allowance?
- (6) What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?

1

The term 'maintenance' refers to the direct human needs for survival, mainly food. In fact, however, the term maintenance covers all living requirements, whether they relate to the upkeep, or to the education, culture or leisure activities of a person.

Maintenance obligations involve the payment of benefits – in principle cash – which meet the living requirements of the beneficiary.

The following persons are required to provide maintenance by order of kinship:

- [a] the spouse, even if he/she is divorced [if there is a maintenance obligation after divorce];
- [b] descendants over ascendants in the order of intestate succession;
- [b] ascendants [parents, grandparents: in the case of absence or incapacity of parents] over their unmarried children (biological or adopted), in principle, while they are minors;
- [b] siblings against siblings, and special cases of maintenance are:
- [c] maintenance paid in case of separation and after divorce or marriage annulment and
- [d] maintenance paid to an unmarried mother for a child born out of wedlock prior to recognition.

2

The child is entitled in principle to receive maintenance from its ascendants [parents or grandparents] until adulthood, i.e. until he/she attains the age of 18 years.

Children are also entitled to receive maintenance in adulthood, while they are studying or attending a higher education or vocational training course, and they are unable to work due to their studies and have no personal assets from which they can meet their maintenance requirements.

A person is entitled to maintenance only if he/she is unable to support himself/herself by means of his/her own assets or through work appropriate to his/her age, state of health and living conditions generally, having regard, among other things, to any educational needs he/she may have; minors, even if they have assets of their own, are entitled to maintenance from their parents in so far as the income from their own assets or work is not sufficient to maintain them. However, a person is not obliged to provide maintenance if, in view of his/her other obligations, he/she is not in a position to do so without jeopardising his/her own maintenance; this rule does not apply to the maintenance of a minor by a parent, unless the minor is entitled to be maintained by some other person, or can be supported by his/her own assets.

3

Normally, a person entitled to receive maintenance must apply to the court to seek maintenance from the person liable.

If the New York Convention on the recovery abroad of maintenance (Legislative Decree 4421/1964) is applicable, the delegation responsible for transmitting a maintenance claim from a person entitled who is resident in a State party to the Convention shall request the delegation responsible for receiving such claim in the respective State party to the Convention where the debtor resides, specifically the Ministry of Justice in Greece, to take all the measures required for recovery of maintenance by the person entitled. In practice, the Ministry of Justice entrusts an attorney to provide for the recognition of the right or the enforcement of a judgment rendered by a foreign court in favour of the alien beneficiary, who may exercise all relevant legal remedies before the Greek courts.

4

The court with jurisdiction in actions for maintenance brought by a person entitled against a person liable is the Single-Member Court of First Instance [Articles 17(2) and 681B of the Code of Civil Procedure].

The court with territorial jurisdiction is the court of the place of domicile or residence of the party entitled to maintenance [Article 39A CCP] or of the defendant maintenance debtor, if the application is combined with matrimonial disputes or disputes between parents and children, or the court of the last joint habitual residence of the spouses.

If there is urgency or imminent danger, the person entitled to maintenance may ask the Single-Member Court of First Instance that has territorial jurisdiction to grant an injunction awarding him or her maintenance on a temporary basis, until a final judgment is rendered on the entitlement in an ordinary proceeding.

5

In an application for maintenance, the defendant must make a down payment for the plaintiff's court expenses, which may not exceed EUR 300 [Article 173(4) CCP]. In proceedings of this kind, if

the defendant does not produce proof of payment to the court clerk before the hearing of the case, the defendant will be deemed to have failed to appear, which means that a default judgment may be delivered against him or her [Article 175 CCP].

The plaintiff may request legal aid under Law 3226/2004, if his or her income is very low, by submitting evidence to that effect with an application for a separate injunction before the Single-Member Court of First Instance.

6

In principle, maintenance is paid in advance to the person entitled on a monthly basis.

The amount of maintenance is not allowed to be paid as a lump sum, except in cases of maintenance after divorce [Article 1443(b) of the Civil Code].

If the person entitled is a minor, or is under court assistance, maintenance is paid to his or her parent or representative or, respectively, to his or her court-appointed provider who obviously will perform the relevant actions on behalf of the person entitled.

II. READ THE PARAGRAPHS ABOVE AGAIN AND FIND THE WORDS FOR THE DEFINITIONS PROVIDED BELOW.

- | | | |
|-----|--|----------|
| 1. | the child, grandchild, great-grandchild of a person (n.) | (para 1) |
| 2. | a brother or sister (n.) | (para 1) |
| 3. | professional (adj.) | (para 2) |
| 4. | putting in danger (v.) | (para 2) |
| 5. | look for (v.) | (para 3) |
| 6. | responsible (adj.) | (para 4) |
| 7. | likely to occur at any moment (adj.) | (para 4) |
| 8. | a court order (n.) | (para 5) |
| 9. | partial or initial payment (n.) | (para 5) |
| 10. | a person who has not reached legal adulthood (n.) | (para 6) |

III. READ THE EXCERPT BELOW RELATING TO THE LIMITATION ON ENFORCEMENT OF MAINTENANCE OBLIGATION AND CHANGE THE WORDS WHICH ARE IN BOLD INTO MORE FORMAL EQUIVALENTS. THE FIRST LETTER IS GIVEN TO HELP YOU.

Entitlement to maintenance comes to an end if the conditions on which it was granted **c**_____ (**stop**) to exist, or if the person entitled or the person liable dies; the claim of the person entitled against the person liable is subject to a five-year prescription, starting from the time that the claim was **l**_____ (**submitted**).

Claims from persons [i.e. an institution] who paid maintenance to a person entitled against the person originally liable are subject to a five-year prescription [Article 250(17) of the Civil Code].

An unmarried mother is entitled to claim the childbirth costs and maintenance from the child's father for a limited period [two months before birth and four months, but no more than one year

[in exceptional cases], after birth, if **p** _____ (**fatherhood**) is established by court order and the mother is in poverty. An unmarried mother's claim is prescribed three years after birth, and is also brought against the father's **h** _____ (**inheritors**).

S _____ (**acquisition**) of up to 1/2 of the payable salary of a person liable for a maintenance claim is allowed and is also applicable on deposits with credit institutions [Article 982(2)(d) and (3) CCP].

IV. READ THE EXCERPT BELOW ON THE ASSISTANCE IN OBTAINING MAINTENANCE AND COMPLETE THE TEXT WITH THE APPROPRIATE PREPOSITION.

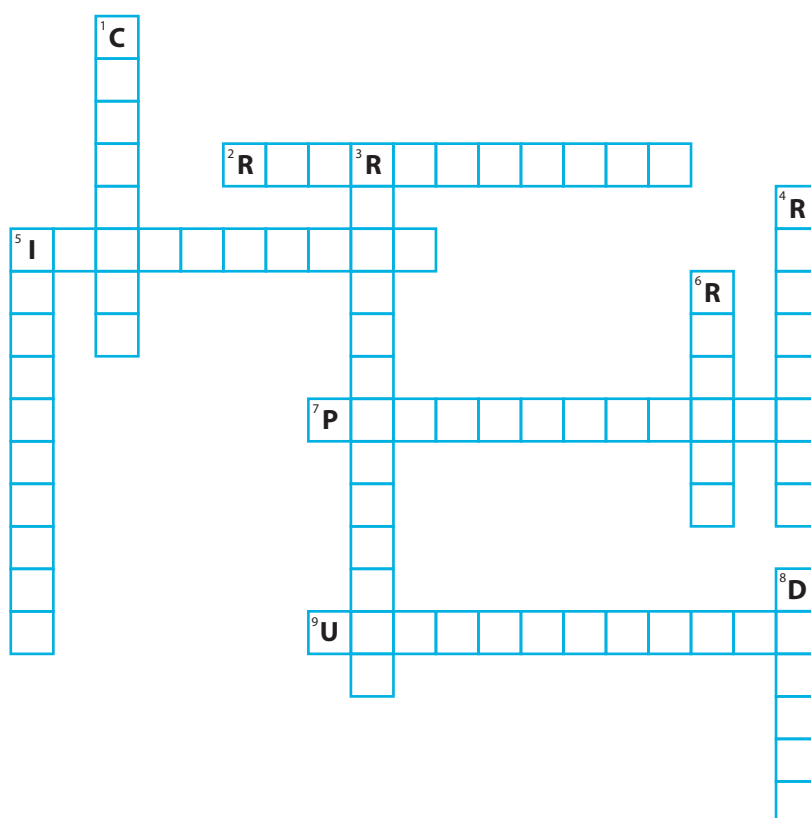
for, for, in, in, in, to, to, under, with, without

1) _____ the provisions of Articles 51 and 56 of the above Regulation, the central authority of the Member State of a person who is applying 2) _____ maintenance: a) shall cooperate 3) _____ the central authority of the Member State of the person liable in forwarding and receiving the relevant applications; (b) shall initiate or facilitate the initiation of proceedings in relation 4) _____ those applications. For such applications, the central authorities shall take all appropriate measures to: (a) provide or facilitate the provision of legal aid, when circumstances require so; (b) facilitate the identification of the person liable or the person entitled, 5) _____ particular by application of Articles 61, 62 and 63 of the Regulation; (c) facilitate access to relevant information concerning the income and, if necessary, the financial situation of the person liable or the person entitled, including the identification of their assets, especially pursuant 6) _____ Articles 61, 62 and 63; (d) encourage amicable settlements with the aim of voluntary payment of maintenance, as appropriate, through mediation, conciliation or similar procedures; (e) facilitate further implementation of decisions on maintenance obligations, including default interest; (f) facilitate the collection and rapid transfer of maintenance payments; (g) facilitate access to documents or other evidence, 7) _____ prejudice to Regulation (EC) No 1206/2001; (h) provide assistance 8) _____ establishing parentage, where necessary, 9) _____ the recovery of maintenance; (i) initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial 10) _____ nature and the purpose of which is to secure the outcome of a pending maintenance application; (j) facilitate the communication or service of documents subject to Regulation (EC) No 1393/2007.

https://e-justice.europa.eu/content_maintenance_claims-47-el-en.do?member=1

B. FURTHER LANGUAGE PRACTICE

I. COMPLETE THE FOLLOWING CROSSWORD.



ACROSS

2. (adjective) extending in scope or effect to matters which have occurred in the past
3. (Latin, two words) amongst other things
7. (noun) limitation or restriction of the time within which an action or claim can be raised
9. (adjective) contrary to reason or good sense, not reasonable in demands or expectations

DOWN

1. (noun) one to whom money is owed
3. (noun) action of giving money back
4. (verb) to give up in a complete and formal manner
5. (noun) adjustment in rates of payment in money to reflect changes in the value of money
6. (noun) the set of conditions under which a system occurs or is maintained
8. (noun) one who owes money

II. NOW, USE THE WORDS FROM THE PREVIOUS EXERCISE IN THE APPROPRIATE CONTEXT.

Article 8: Designation of the applicable law

- (1) Notwithstanding Articles 3 to 6, the maintenance creditor and _____ may at any time designate one of the following laws as applicable to a maintenance obligation -
 - a) the law of any State of which either party is a national at the time of the designation;
 - b) the law of the State of the habitual residence of either party at the time of designation;
 - c) the law designated by the parties as applicable, or the law in fact applied, to their property _____; [...]
- (4) Notwithstanding the law designated by the parties in accordance with paragraph 1, the question of whether the creditor can _____ his or her right to maintenance shall be determined by the law of the State of the habitual residence of the creditor at the time of the designation.
- (5) Unless at the time of the designation the parties were fully informed and aware of the consequences of their designation, the law designated by the parties shall not apply where the application of that law would lead to manifestly unfair or _____ consequences for any of the parties.

Article 11: Scope of the applicable law

The law applicable to the maintenance obligation shall determine, _____:-

- a) whether, to what extent and from whom the _____ may claim maintenance;
- b) the extent to which the creditor may claim _____ maintenance;
- c) the basis for calculation of the amount of maintenance, and _____;
- d) who is entitled to institute maintenance proceedings, except for issues relating to procedural capacity and representation in the proceedings;
- e) _____ or limitation periods;
- f) the extent of the obligation of a maintenance debtor, where a public body seeks _____ of benefits provided for a creditor in place of maintenance.

III. FILL IN THE GAPS WITH THE MOST APPROPRIATE TERM. YOU WILL FIND IN SQUARE BRACKETS A CLUE IN THE FORM OF A NEAR-SYNONYM TO THE TERM THAT IS MISSING.

Case C-184/14

A v B

II – The facts of the dispute in the main (1) _____ [case, action; plural form] and the question (2) _____ [sent] referred for a preliminary ruling

19. Mr A and Ms B, both of Italian nationality, are married and have two children (3) _____ [under age; 3 words], also of Italian nationality. The four members of the family have their place of normal residence in London (United Kingdom), where the children live with their mother.

20. Mr A **(4)** _____ [*lodged, issued*] an application on 28 February 2012 with the Tribunale di Milano (District Court, Milan) (Italy) for a declaration of separation from his **(5)** _____ [*husband or wife*] on the basis of the latter's **(6)** _____ [*error, blame*], and for the right to custody of their two children to be **(7)** _____ [*divided, split*] between the spouses, with their place of residence being fixed with their mother. Mr A also proposes to pay a monthly allowance of EUR 4 000 for the **(8)** _____ [*'alimony' is its American equivalent*] of the children.
21. Ms B lodged a counterclaim before the Tribunale di Milano, **(9)** _____ [*pursuing, looking for*] a declaration of separation on the basis of the exclusive fault of Mr A, and requesting that she be **(10)** _____ [*awarded*] custody of the children and receipt of a monthly allowance of EUR 18 700. In addition, Ms B **(11)** _____ [*opposed, challenged*] the jurisdiction of the Italian court in matters of rights to custody, fixing the children's place of residence, their maintenance of relationships and contacts and the contribution to their maintenance. She takes the view that, as the spouses have always lived in London and the children were born there and are resident there, the United Kingdom **(12)** _____ [*tribunals*], in accordance with Regulation No 2201/2003, have jurisdiction to **(13)** _____ [*deal with*] proceedings relating to these matters.
22. By **(14)** _____ [*a type of decision*] of 16 November 2012, the Tribunale di Milano **(15)** _____ [*considered, deemed*] that the Italian court did indeed have jurisdiction in the matter of the application for legal separation, in accordance with Article 3 of Regulation No 2201/2003. However, with regard to the requests relating to parental responsibility in respect of the two children of minor age, that court, following Article 8(1) of Regulation No 2201/2003, **(16)** _____ [*recognized, accepted*] the jurisdiction of the English court in view of the fact that the children are habitually resident in London.
23. With respect, more precisely, to the **(17)** _____ [*requests*] relating to spouse and child maintenance, the Tribunale di Milano referred to Regulation No 4/2009, and in particular to Article 3 thereof. It thus held that it had jurisdiction to **(18)** _____ [*resolve, rule*] on the application related to maintenance made by and for the benefit of Ms B, since that application was ancillary to the proceedings concerning personal status. However, that court declared that it **(19)** _____ [*lacked competence*] in relation to the application concerning maintenance of the minor children in so far as, in its view, that application was ancillary, not to the proceedings concerning personal status, but to parental responsibility, in respect of which the United Kingdom court had jurisdiction.
24. In view of the Italian court's **(20)** _____ [*rejection*] to assume jurisdiction, Mr A brought an appeal before the Corte suprema di cassazione, based on a single **(21)** _____ [*allegation, argument*], namely that the Italian court's jurisdiction in the matter of the maintenance of the minor children could, also, be regarded as ancillary to the legal separation proceedings, in accordance with Article 3(c) of Regulation No 4/2009.
25. Since it had doubts as to the proper interpretation of Regulation No 4/2009, the Corte suprema di cassazione decided to **(22)** _____ [*hold, pause*] the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
 'May the decision on a request for child maintenance raised in the context of proceedings concerning the legal separation of spouses, being ancillary to those proceedings, be taken both by the court **(23)** _____ [*in front of*] before which those separation proceedings are **(24)** _____ [*waiting, undecided*] and by the court before which proceedings concerning parental responsibility are pending, on the basis of the prevention

criterion, or must that decision of necessity be taken only by the (25) _____ [last of two] court, as the two distinct criteria set out in points (c) and (d) of the oft-cited Article 3 are alternatives (in the sense that they are mutually exclusive)?

IV. FILL IN THE GAPS WITH THE MOST APPROPRIATE FORM OF THE WORD IN SQUARE BRACKETS.

Case C-184/14

A v B

III – My analysis

26. By its question, the (1) _____ [refer] court asks the Court whether, in essence, Article 3(c) and (d) of Regulation No 4/2009 must be interpreted as meaning that the court which has jurisdiction to entertain proceedings concerning (2) _____ [maintain] obligations towards minor children, raised in the context of legal separation proceedings, may be both the court which has jurisdiction to entertain proceedings concerning personal status and the court which has jurisdiction to entertain proceedings concerning (3) _____ [parent] responsibility.
27. In fact, the response to the question posed assumes that the following points have been resolved. First of all, in the case of children living at home, is the matter of the fixing and (4) _____ [apportion] of maintenance obligations towards those children inextricable from the proceedings relating to the separation of their parents? Next, what consequences must be drawn from this with regard to the jurisdiction of the courts before which such separation proceedings have been brought?
28. Taking into consideration the notion of the (5) _____ [child] best interests seems to me to dictate the nature of the response that must be provided to the referring court. Furthermore, it is in line with this (6) _____ [fundament] principle that I have decided to reword the question in such a way that the child becomes the (7) _____ [focus] point of this issue.
29. It is indeed (8) _____ [deny; negative form], both in terms of the legal texts and the Court's case-law, that this notion permeates family law in a (9) _____ [bound] binding manner when the child's position happens to be affected by the dispute in the main proceedings. (...)
35. The conclusion to be drawn from this (9) _____ [reason] is quite clear. The best interests of the child must be the guiding consideration in the application and interpretation of EU legislation. In this regard, the words of the Committee on the Rights of the Child attached to the office of the UN High Commissioner for Human Rights (OHCHR) are particularly relevant. That committee points out that '(the best interests of the child) constitute a standard, an objective, an approach, a (10) _____ [guidance] notion, that must clarify, inhabit and permeate all the internal norms, policies and decisions, as well as the budgets relating to children.'
36. The case-law relating to Regulation No 2201/2003 is clearly (11) _____ [transfer] to Regulation No 4/2009. It would be (12) _____ [comprehend; negative form] if the intensity of this principle, which features among the fundamental rights of the child, could vary depending on the area of family law in question, since, whatever that area may be, the child remains (13) _____ [direct] concerned. (...)

44. It is also clear that, as the rupture of married status or conjugal life results in the separation of the spouses and the breakup of domestic life, the matter of fixing the maintenance **(14)** _____ [*allow*] for the children living at home and of allocating the burden of that allowance between the parents is one that must be addressed not only as a matter of course, according to simple common sense, but also, and even more so, for purely **(15)** _____ [*law*] issues. I would be denying the daily reality of actions of this sort if I did not acknowledge with the **(16)** _____ [*strong*] of the evidence that one aspect — the fixing of the children's maintenance allowance and the allocation of the burden thereof — is the automatic and natural consequence of the other aspect, namely the **(17)** _____ [*discontinue*] of domestic life. The ancillary character, in the legal sense of the term, that links the first aspect to the second therefore appears to me to be **(18)** _____ [*refute; negative form*] established in the present case. (...)
64. In the dispute in the main proceedings, the best **(19)** _____ [*interested*] of the child therefore require that jurisdiction of the Italian courts be declined in favour of that of the courts of the Member State in which the children are **(20)** _____ [*habitual*] resident, namely the courts of the United Kingdom, those latter courts, moreover, having jurisdiction to entertain the proceedings **(21)** _____ [*concern*] parental responsibility in accordance with Article 8(1) of Regulation No 2201/2003.
65. It follows, admittedly, in a situation such as that in the main proceedings, that the parties' **(22)** _____ [*free*] to choose the court having jurisdiction is limited. That does not appear to be **(23)** _____ [*question*] or at variance with the fundamental principles governing this area since the parties in question are the parents and the **(24)** _____ [*restrict*] of their choice is imposed upon them for the sake of the best interests of their child/children.

V. CHOOSE THE CORRECT PREPOSITION.

OPINION **(1)** *OF/BY* ADVOCATE GENERAL BOT
delivered **(2)** *in/on* 16 April 2015

Case C-184/14

A v B

(Request **(3)** *of/for* a preliminary ruling **(4)** *from/by* the Corte suprema di cassazione (Italy))

(Best interests **(5)** *for/of* the child — Charter of Fundamental Rights of the European Union — Article 24(2) — Regulation (EC) No 4/2009 — Jurisdiction **(6)** *in/on* matters relating to maintenance obligations — Request relating to a maintenance obligation in respect **(7)** *to/of* children raised, as ancillary **(8)** *of/to* separation proceedings, in a Member State other than that **(9)** *in/at* which the children are habitually resident — Regulation (EC) No 2201/2003– Jurisdiction in matrimonial matters and matters of parental responsibility)

- For the first time the Court is being called to interpret Article 3(c) and (d) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating **(10)** *to/with* maintenance obligations.
- (11)** *For/Under* Article 3(c) and (d) of Regulation No 4/2009, in matters relating to maintenance obligations in Member States, jurisdiction lies **(12)** *on/with* the court which, according to its

own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, or with the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility, if the matter relating to maintenance is ancillary to those proceedings.

3. **(13)** *In/with* the case brought before the Court, the Corte suprema di cassazione (the Italian Court of Cassation) asks the Court whether a request for child maintenance, raised **(14)** *at/in* the context of separation proceedings, may be regarded as ancillary both to proceedings concerning personal status and to proceedings concerning parental responsibility. Such a possibility would have the consequence of establishing jurisdiction **(15)** *in/with* two courts of different Member States, namely the Italian court hearing proceedings concerning the legal separation of the spouses and the United Kingdom court which has jurisdiction to deal **(16)** *with/Ø* proceedings relating to parental responsibility.
4. In this Opinion, I shall set **(17)** *off/out* the reasons why I think that Article 3 of Regulation No 4/2009 must be interpreted as meaning that, if there are main proceedings concerning the legal separation of spouses during which a request relating to child maintenance obligations is raised, the court dealing with those main proceedings will, generally, be the court having jurisdiction to deal with that request concerning maintenance obligations. However, this general jurisdiction must give way when the best interests of the child so require. [...]

ANSWER KEY

UNIT 1

Exercise I (page 11)

(1) left-behind parent	contact (now 'child arrangements' in the UK and 'visitation rights' in the US)	separation
(2) spouse	(11) divorce	(17) matrimonial
(3) maintenance	(12) marital/matrimonial property (also 'matrimonial assets')	(18) prenuptial/premarital agreement (colloquially, 'prenup')
(4) wrongful removal	(13) annulment/nullity	(19) cohabitation
(5) civil partnership/union	(14) taking parent	(20) desertion
(6) custody	(15) paternity	(21) child abduction (if by a parent, 'parental abduction')
(7) parental responsibility	(16) (legal/judicial)	(22) holder
(8) guardian		
(9) domestic violence		
(10) rights of access/		

Exercise II (page 13)

VERB	NOUN	ADJECTIVE
1. abduct	abduction	abducted, abducting
2. act	action, actor	actionable, acting
3. testify	testimony	testifying, testified, testimonial
4. annul	annulment	annulled
5. appeal	appeal, appellant, appellee	appealed, appealing
6. assist	assistance, assistant	assisting, assisted
7. authorise	authority, authorisation	authorised, authorising
8. claim	claim, claimant	claiming
12. hear	hearing	hearing, heard
13. issue	issue, issuance	issuing, issued
15. ----	parent	parental, parenting
16. recognise	recognition	recognisable, recognising
17. remove	removal	removed, removing, removable
18. request	request	requesting, requested
19. retain	retention	retained, retaining, retainable
20. submit	submission	submitting, submitted
21. sue	suit	suing, sued

Exercise III (page 13)

- (1) establishment, parenthood, attribution, responsibility
- (2) guardianship, placement, institutional
- (3) habitual, wrongful, residence
- (4) separation, annulment, reconcilable
- (5) declaration, enforcement, authenticity

Exercise IV (page 14)

1. (b) attribution, termination; 2. (a) custody, (c) designation; (d) placement; (e) disposal;
3. (a) contesting; (b) revocation; (g) offences

Exercise V (page 15)

- (1) (a) adopter; (b) adoptee; (2) (b) limitation of parental authority; (c) deprivation of parental authority; (3) (b) spouse; (c) cohabitant; (4) (a) minor; (b) of age; (5) (a) maternity; (c) surrogacy;
- (6) (a) sibling; (b) next of kin

Exercise VI (page 15)

- (1) excluded from; (2) wrongful, without; (3) refuse; (4) the latter; (5) best; (6) present, temporary

Exercise VII (page 16)

- (1) irresponsibility; (2) disinterested; (3) irresponsible, misinform; (4) unavailable, irrelevance;
- (5) unofficial, inappropriate; (6) inefficiency, indirectly; (7) unauthorised; (8) ineffectiveness, impossibility, unexceptional.

Exercise VIII (page 16)

- | | | |
|------------------------|--------------------------|---------------------|
| (1) is sought; | (6) brought; | (11) buys; |
| (2) bound; | (7) has led, have dealt; | (12) borne; |
| (3) set out, has gone; | (8) were; | (13) have begun; |
| (4) borne; | (9) becomes; | (14) died, lay down |
| (5) will come; | (10) has been chosen; | (15) have made |

Exercise IX (page 17)

- (1) Cooperation between courts in family proceedings should be improved.
- (2) The objectives of the proposed action cannot be sufficiently achieved.
- (3) Measures in accordance with the principle of subsidiarity may be adopted by the EU.
- (4) The request should be executed by the requested court in accordance with its national law.
- (5) The fees paid to experts and interpreters should not be borne by the receiving court.
- (6) Would the expected answer have been given by the second witness?
- (7) Was your lawyer told about custody?
- (8) The form must be filled in by the applicant.
- (9) The inconsistency has not been noticed by the expert witness.
- (10) The questioning of the witness was found to be more tedious than expected by defence lawyer.

- (11) Will a new team of lawyers be hired by the defendant?
- (12) The issue of maintenance has not been agreed on by the parties yet.
- (13) Will the judgment have been handed down by the judge by Thursday?
- (14) When were the proceedings brought by the petitioner?

Exercise X (page 18)

- (1) Should you file for divorce, do it in England.
- (2) Were you to choose the court for your divorce, where would you have your case heard?
- (3) Had she filed in England, her conduct during the marriage would have been irrelevant.
- (4) The media would not have been against the proposal had it really worked.
- (5) Mrs. Jones wouldn't have claimed 20,000 euros had her husband's maintenance payments not been cancelled.
- (6) Spouses may raise an application for divorce in the courts of the Member State of their last habitual residence should one of them still reside there.
- (7) There is a prorogation rule in Article 12 which stipulates that a court which is seised of divorce proceedings under the Regulation also has jurisdiction in matters of parental responsibility connected with the divorce should certain conditions be met.
- (8) Should a person wish to marry someone else after a divorce it should only be necessary to produce the judgment itself to the authorities in the Member State where the new marriage is to take place to vouch the civil status of that person as having been divorced.
- (9) Although decisions on parental responsibility concern in most cases minors below the age of 18, persons below 18 years may be subject to emancipation under national law should they wish to marry.
- (10) This provision allows a court which is competent to deal with a matter of parental responsibility also to decide upon maintenance should that question be ancillary to the question of parental responsibility.

UNIT 2

READING COMPREHENSION

Exercise I (page 29)

(1) common assets, (2) court settlement, (3) family home; (4) former spouse; (5) matrimonial property, (6) minor children, (7) parental responsibility

Exercise II (page 29)

(1) False, (2) False, (3) True, (4) False, (5) False

Exercise III (page 32)

(1) significant, (2) in kind, (3) waive(d), (4) countersign, (5) undue

Exercise IV (page 32)

(1) to, (2) for, (3) into, (4) in, (5) from

FURTHER LANGUAGE PRACTICE

Exercise I (page 32)

(1) settlement conference; (2) premarital/prenuptial agreement; (3) dissolution; (4) alimony; (5) marital property; (6) non-marital property; (7) custody; (8) child support; (9) domestic violence; (10) defendant; (11) claimant; (12) visitation

Exercise II (page 33)

(1) on, to, with, for, of; (2) with, for, to, between; (3) in, on, within; (4) on, for, into; (5) to, of, with, with, in, for; (6) to, of, to; (7) by, on, of

UNIT 3

READING COMPREHENSION

Exercise I (page 43)

(open answer)

Exercise II (page 47)

(1) T; (2) F; (3) T; (4) F; (5) T.

Exercise III (page 48)

- | | | |
|-----------------------------------|------------------------------|------------------------------|
| (1) lies with the court | (3) brought before the Court | (6) territorial jurisdiction |
| (2) entertain proceedings, status | (4) to deal with | (7) criterion of proximity |
| | (5) give way | |

Exercise IV (page 48)

- | | | |
|------------------|-----------------------|-----------------|
| (1) relevant | (5) connecting factor | (9) breakup |
| (2) points out | (6) strikes | (10) allocation |
| (3) approach | (7) ancillary | |
| (4) transferable | (8) conjugal life | |

Exercise V (page 49)

- | | | |
|-------------------|------------------|----------------------|
| (1) inadequate | (5) illicit | (9) improperly |
| (2) irresponsible | (6) uncertain | (10) misinterpreting |
| (3) discontinuous | (7) inextricable | |
| (4) unfavourable | (8) irrefutable | |

Exercise VI (page 49)

- | | |
|---|---------------------------------|
| (1) on the one hand, on the other hand, | (6) as well as, to deal with |
| counter to | (7) taken into account |
| (2) in this regard, period of latency | (8) solely on |
| (3) in breach of | (9) set at nought |
| (4) faced by | (10) at variance, imposed upon, |
| (5) at the root of | for the sake of |

FURTHER LANGUAGE PRACTICE**Exercise I (page 50)**

- (1) intermediary; (2) whereabouts; (3) provisional; (4) resolution; (5) information; (6) connection; (7) proceedings; (8) aid; (9) counsel

Exercise II (page 51)

- (1) guardians, representatives; (2) (a) exercise, (b) residence; (c) guardianship, curatorship; (d) designation; (e) placement; (f) supervision), (g) disposal; 3) provisions; (4) operation; (5) removal, jointly, habitually, removal

Exercise III (page 52)

- (1) enumerates; (2) parental; (3) adoption; (4) responsibility; (5) generally; (6) application; (7) provision; (8) resulting, (9) enforced

Exercise IV (page 52)

- (1) covers; (2) encompasses; (3) qualified; (4) define; (5) leaves; (6) concern; (7) marry; (8) issued; (9) fall

UNIT 4**READING COMPREHENSION****Exercise I (page 60)**

- (1) judgment; (2) case; (3) reference for; (4) chamber; (5) hearing; (6) jurisdiction; (7) proceedings; (8) referring; (9) dispute; (10) of; (11) on; (12) thereafter; (13) before; (14) sought; (15) judgment; (16) awarded; (17) of access; (18) placed; (19) partner; (20) contrary; (21) detrimental; (22) breach; (23) handed down; (24) provisional; (25) final; (26) report; (27) rejected; (28) hearing; (29) be; (30) sole; (31) against; (32) procedure; (33) production; (34) notified; (35) pending; (36) sets; (37) upheld; (38) of; (39) set aside; (40) dismissed; (41) instructed; (42) light; (43) order; (44) jurisdiction; (45) tools; (46) held; (47) recognised; (48) claims; (49) review; (50) otherwise; (51) inadequate; (52) bound; (53) whereas; (54) stay

Exercise II (page 66)

- (1) [...] *both parties brought divorce proceedings before the Spanish courts*: – both parties (appellant and respondent) started the divorce trial/filed for divorce before the Spanish courts
- (2) *the court granted rights of access*: the court gave rights of access
- (3) *that court handed down a fresh judgment*: that court delivered a new judgment
- (4) *the failure by a duly notified party to attend voluntarily a first instance hearing*: the fact that a party that was appropriately informed did not attend (participate in) a first instance hearing
- (5) *the court of the Member State of enforcement lacks any power of review*: the court of the Member State of enforcement does not have any power to review (reconsider, correct, change) a previous decision
- (6) *to stay the proceedings*: to suspend/temporarily stop the trial

Exercise III (page 66)

- (1) *in essence*: basically
- (2) *exceptionally*: not the normal thing, not the normal situation
- (3) *on the basis of*: on the grounds of, under
- (4) *the latter court*: the court mentioned in the second place (in this case, that of the MS of origin)
- (5) *contrary to*: against the provisions of
- (6) *what is at issue*: what is in dispute here, what is at stake here
- (7) *within the meaning of Article 2(11) of Regulation No.2201/2003*: “wrongful retention” as defined in Article 2(11)

Exercise IV (page 66)

- (1) That report stated that custody should be awarded to the father, since he was best placed to ensure that the family, school and social environment of the child was maintained.
- (2) In July 2009 the proceedings in relation to rights of custody in respect of Andrea were continued before the same court.
- (3) The court considered that it was necessary both to obtain a fresh expert report and to hear Andrea personally and fixed dates for both in Bilbao. However, neither Andrea nor her mother attended on those dates.
- (4) By judgment of 16 December 2009 the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao awarded sole rights of custody in respect of Andrea to her father. Ms Pelz brought before the Audiencia Provincial de Bizcaya (Biscay Provincial Court) an appeal against that judgment which included the request that Andrea be heard.
- (5) By judgment of 21 April 2010 the Audiencia Provincial dismissed that request on the ground that, according to Spanish rules of procedure, the production of evidence on appeal is possible only in certain circumstances expressly defined by legislation.
- (6) On 18 June 2010 Mr Aguirre Zarraga brought an appeal against that judgment before the Oberlandesgericht Celle, requesting that the judgment be set aside, that the claims of Ms Pelz be dismissed and that the judgment of the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao of 16 December 2009 be enforced by operation of law as an order to return Andrea to her father.

Exercise V (page 67)

- (1) The German court.
- (2) The mother, a German citizen.
- (3) Whether, in circumstances as those in the main proceedings, the court with jurisdiction in the Member State of enforcement can exceptionally oppose enforcement of a judgment ordering the return of a child, on the ground that the court of the Member State of origin may have infringed Art. 42 of Council Regulation No. 2201/2003.
- (4) Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility – Parental responsibility – Rights of custody – Child abduction – Article 42 – Enforcement of a certified judgment ordering the return of a child handed down by a (Spanish) court with jurisdiction – Power of the requested (German) court to refuse enforcement of that judgment in a case of serious infringement of the child's rights
- (5) That the court with jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin.

FURTHER LANGUAGE PRACTICE**Exercise I (page 67)**

(1) wrongful, before, keep; (2) preceding, declined; (3) present, provisional, limited; (4) have, commencement, having; (5) terminated; (6) refused, contrary to; (7) refused, infringes; (8) public, facilitate

Exercise II (page 68)

Lord Wilson will summarise the decision of the Court.

Sometimes a court needs to determine whether a child's residence in a country was habitual. How relevant to that determination is the child's own state of mind while resident there?

The appeals concern four children, namely T, a girl now aged 13, and three boys now aged 11, 9 and 5.

Until July 2012 they lived with their British father and their Spanish mother in England. The parents' marriage broke down and in July 2012, with the father's reluctant consent, the mother took the children to live in Spain. They lived there until December 2012 when they returned to England to spend Christmas with their father. They were supposed to return to Spain on 5 January 2013 but the two older boys hid their passports, the plane was missed and all four children have remained here ever since.

The mother swiftly brought proceedings here pursuant to the Hague Convention 1980 for an order for the immediate return of the children to Spain. The first question for the judge was whether they had acquired a habitual residence in Spain during those five months. He decided that they had, and therefore that it had been wrong for the father to retain them in England after 5 January. He went on to decide that none of the narrow exceptions to the court's obligation to return the children to Spain applied so he ordered that all of them should go back there.

The father and T appealed. The Court of Appeal disagreed with the judge on only one point. It decided that, in the light of the strength of her objections to returning to Spain, it was not appropriate to send T back to Spain. That raised the possibility that another exception might apply in relation to the boys for if they went back it would now be without T, so would that place them in an intolerable situation?

The court remitted that question to the judge, who has not yet determined it.

The father and T, supported by the two older boys, now appeal to this Court. They argue that none of the four children ever acquired habitual residence in Spain and that the mother's application should have been dismissed on that basis.

The basis for the dismissal matters because unless it was that they were not habitually resident in Spain on 5 January 2013, the Spanish courts could still in due course order the children back and the English court would have to comply. That is the effect of Article 11.8 of a European Council Regulation dated 27 November 2003.

Today this Court unanimously sets aside the judge's conclusion that the children were habitually resident in Spain on 5 January and directs a fresh determination to be made of that issue. Prior to the hearing before the judge a Cafcass officer interviewed T and the two older boys. The upshot was that they, particularly T, did not want to go back to Spain. In the course of the interviews they, again particularly T, made comments about their life in Spain in 2012 which, on one view, and if taken at face value indicated that they had not felt settled there.

It has recently been established, both at a European and at a domestic level that a person is habitually resident in a country if he or she has achieved some degree of integration in a social and family environment there. The consequence is, as this Court unanimously holds, that a child's state of mind during a period of residence in a country will sometimes be relevant to whether he or she was integrated in that environment and therefore to whether the residence was habitual.

At this point however a difference of emphasis arises among the five justices. Three of us consider that it is principally the state of mind only of an adolescent child, in the case therefore only of T, which might occasionally be relevant. They are doubtful whether the state of mind of, in this case, the two older boys could, alone, alter the judge's conclusion about their habitual residence. Their conclusion that the judge should reconsider the habitual residence of the three boys, as well as of T, is primarily founded on a different hypothesis, namely that, in the light of the apparent closeness of all four children, T's continued habitual residence in England, if such it turns out to have been, might impact on the habitual residence of the boys. But the two others of us would have held that the state of mind of younger children, say school-age children, can in principle be as relevant as that of adolescent children to their habitual residence. So they would have been prepared to countenance the judge's possible attachment of greater weight to the state of mind of the two older boys while resident in Spain, even though they were then aged only 10 and 8.

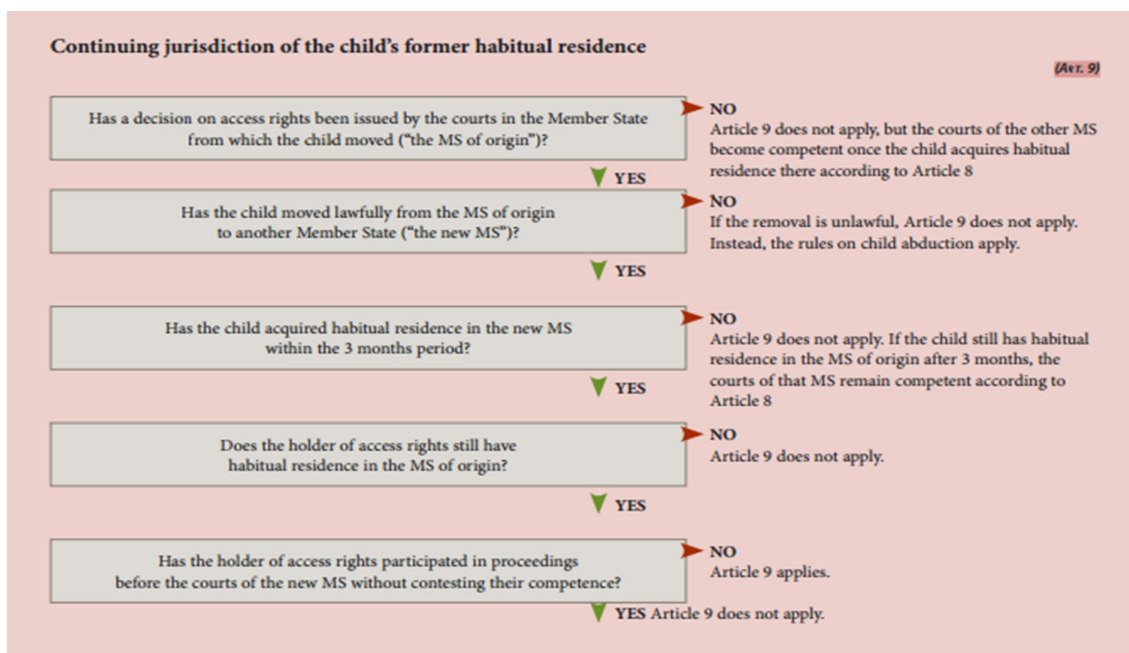
Exercise III (page 69)

(1) if; (2) unless; (3) where; (4) if, at which; (5) whether, which; (6) who, who; (7) when; (8) in order to

Exercise IV (page 70)

(1) in, of, to, under; (2) to, in, without, to; (3) under, on; (4) through, in, to, to; (5) with, to; (6) by, on, of; (7) in, at, before, from; (8) in, to, into, to, by

Exercise V (page 71)



UNIT 5

READING COMPREHENSION

Exercise I (page 83)

- (1) What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?
- (2) Up to what age can a child benefit from a maintenance allowance?
- (3) Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?
- (4) If I plan to bring the case to court, how do I know which court has jurisdiction?
- (5) Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?
- (6) How and to whom will the maintenance be paid?

Exercise II (page 85)

- | | | | |
|----------------|------------------|------------------|------------|
| (1) descendant | (4) jeopardising | (7) imminent | (10) minor |
| (2) sibling | (5) seek | (8) injunction | |
| (3) vocational | (6) liable | (9) down payment | |

Exercise III (page 85)

cease, lodged, paternity, heirs, seizure

Exercise IV (page 86)

- | | | | |
|-----------|--------|-------------|---------|
| (1) under | (4) to | (7) without | (10) in |
| (2) for | (5) in | (8) in | |
| (3) with | (6) to | (9) for | |

FURTHER LANGUAGE PRACTICE**Exercise I (page 87)**

Across: (2) retroactive, (5) inter alia, (7) prescription; *Down:* (1) creditor; (3) reimbursement; (4) renounce; (5) indexation; (6) regime; (8) debtor

Exercise II (page 88)

Article 8: (1) debtor, regime; (4) renounce; (5) unreasonable

Article 11: (a) creditor, (b) retroactive; (c) indexation; (e) prescription; (f) reimbursement

Exercise III (page 88)

(1) proceedings; (2) referred; (3) of minor age; (4) filed; (5) spouse; (6) fault; (7) shared; (8) maintenance; (9) seeking; (10) granted; (11) contested; (12) courts; (13) entertain; (14) order; (15) held; (16) acknowledged; (17) applications; (18) decide; (19) jurisdiction; (20) refusal; (21) plea; (22) stay; (23) before; (24) pending; (25) latter

Exercise IV (page 90)

(1) referring; (2) maintenance; (3) parental; (4) apportionment; (5) child's; (6) fundamental; (7) focal; (8) undeniable; (9) reasoning; (10) guiding; (11) transferable; (12) incomprehensible; (13) directly; (14) allowance; (15) legal; (16) strength; (17) discontinuance; (18) irrefutably; (19) interests; (20) habitually; (21) concerning; (22) freedom; (23) questionable; (24) restriction

Exercise V (page 91)

(1) of; (2) on; (3) for; (4) from; (5) of; (6) in; (7) of; (8) to; (9) in; (10) to; (11) under; (12) with; (13) in; (14) in; (15) in; (16) with; (17) out

GLOSSARY

Here is a list of some of the most important terms in the field of family law. Some of the terms already dealt with in the exercises for each unit have been excluded from this list so as not to duplicate entries. Also, in order to concentrate on the most relevant terminology, the reader is kindly referred to the EJTN handbooks on civil and criminal cooperation.

For each term, a definition and an example of usage are provided, as well as, where applicable, the sources of such definitions and examples.

abduction

Unauthorised removal or retention of a minor from a parent or anyone with legal responsibility for the child
(<http://www.actionagainstabduction.org/>)

Example: *In order to preclude the harmful effects of abduction, rapid proceedings and a prompt return were required.*
(<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-138992&filename=001-138992.pdf>)

acknowledgement of service

Document a person returns to the court when they have received a notification

Example: *In this jurisdiction he has taken no part in proceedings other than to file the acknowledgement of service.* (<https://assets.hcch.net/incadat/fullcase/0021.htm>)

ad litem

(of someone, e.g. a guardian or a representative) Appointed for a suit, for specific proceedings.

Example. *The Městský soud v Brně (Brno Municipal Court), in accordance with Czech law, appointed a guardian ad litem to represent the interests of the minor children.* (<http://curia.europa.eu/juris/document/document.jsf?text=&docid=169198&doclang=EN>)

ADR (Alternative Dispute Resolution)

Methods by which legal conflicts and disputes are resolved privately and other than through litigation in the public courts, usually through one of two forms: mediation or arbitration (<http://www.duhaime.org/LegalDictionary/A/AlternativeDisputeResolution.aspx>)

Example: *ADR provides spouses with the opportunity to find a friendly resolution to divorce cases, for instance, by means of a postnuptial agreement.*

ancillary

Supplementary, additional

Example: *This Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.* (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:HTML>)

annulment

Dissolution of a marriage in legal proceedings in which the marriage is declared null and void as though it never occurred. (<https://www.iafl.com/resources/glossary/>). Also called nullity.

Example: *ADR provides spouses with the opportunity to find a friendly resolution to divorce cases, for instance, by means of a postnuptial agreement.*

applicable law

National law that governs a given question of law in an international context.

Example: *The informed choice of both spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law both spouses is a basic principle of this Regulation.* (<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex:32010R1259>)

authentic instrument

Document recording a legal act or fact whose authenticity is certified by a public authority.

Example: *The EU Succession Regulation (Regulation 650/2012) allows for cross-border circulation of authentic instruments in a matter of succession.* (https://e-justice.europa.eu/content_maintenance_claims-47-gi-maximizeMS_EJN-en.do?member=1)

binding

Obligatory, mandatory. Used in contexts like “binding instrument”, “binding legislation”, etc.)

Example: *These agreements acquire binding legal effect in the Member State of origin following a formal intervention of a public authority, without the intervention of a judicial authority.* (<https://www.ejtn.eu/PageFiles/17914/TH-2019-02%20TEAM%20ITALY.pdf>)

case law

Rules of law flowing from a set of convergent decisions of the courts (<https://lawlegal.eu/case-law/>)

Example: *Due to changes in social events, international conventions, and case law of international courts, the focus on automatic return has been shifted to the child.* ([https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/660559/IPOL_IDA\(2020\)660559_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/660559/IPOL_IDA(2020)660559_EN.pdf))

certified copy

Copy of an original public document which is signed and attested to be an accurate and complete reproduction of that original public document by an authority, empowered to do so under national law and of the same Member State that originally issued the public document. (REGULATION (EU) 2016/1191)

Example: *When you present a document (an original or its certified copy) issued by the authorities in one EU country to the authorities in another EU country, the authorities there must accept your document as authentic without an apostille stamp to prove its authenticity* (https://europa.eu/youreurope/citizens/family/couple/getting-public-documents-accepted/index_en.htm)

child abduction

Where a parent takes/removes a child to another country without the express consent and agreement of the parent(s), usually intending to change the child's country of habitual residence; this could also be carried out by a relative, a friend, an acquaintance...

Sources: <https://decottalaw.com/service/family-divorce/>; <https://www.gov.uk/government/publications/international-parental-child-abduction>. When committed by a parent, it is also called *parental abduction*.

Example: *A common legal framework applicable between Member States of the Union and third states could be the best solution to sensitive cases of international child abduction.* (<https://secure.ipex.eu/IPEXL-WEB/dossier/files/d/082dbcc55d0fd618015d130da3f4033f.do>)

child arrangements

See *rights of access/contact*.

choice of court agreement

Agreement whereby parties to a contract agree which court should decide in case of conflict arising from such contract. Also called “forum selection agreement” or “prorogation agreement”.

Example: *Many of these problems could be avoided by way of early choice of court and applicable law under existing EU instruments and national law, and by agreements on substantive law issues.* (https://europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Projects/EEF/EEF_Instrument_of_the_European_Law_Institute.pdf)

civil partnership/union

Legal relationship which can be registered by two people who aren't related to each other (in some Member States, available to same-sex and opposite-sex couples); a legally recognised relationship between two people. (<https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/living-together-and-civil-partnership-legal-differences/>; <https://www.independent.co.uk/life-style/love-sex/civil-partnerships-mixed-same-sex-couples-marriage-benefits-a9229406.html>).

Example: *In the United Kingdom same-sex couples can formalize their relationship by entering into a civil partnership.* (<http://www.coupleseurope.eu/en/united-kingdom/topics/8-what-does-the-law-provide-for-the-property-of-registered-and-non-registered-partners/>)

claimant

Person that initiates a civil action. In some jurisdictions the terms “plaintiff” or “petitioner” can be used.

Example: *Where none of these criteria applies, the claimant may file the claim with the Court of First Instance for the district of his or her domicile.* (https://e-justice.europa.eu/content_jurisdiction-85-es-en.do?member=1)

cohabitation

Living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage (<https://eige.europa.eu/thesaurus/terms/1065>)

Example: *However, most EU countries have not defined exactly how you can prove a long-term relationship or cohabitation.* (https://europa.eu/youreurope/citizens/family/couple/de-facto-unions/index_en.htm)

contact

Child visitation by the parent who does not have residence.

Example: *All EU countries recognise that children have the right to a personal relationship and direct contact with both parents, even if the parents live in different countries* (https://europa.eu/youreurope/citizens/family/children/parental-responsibility/index_en.htm)

contact order

Order that determines which family members a child should have regular meetings with. It will specify who the child should have contact with, the frequency of such contact, and the type of contact (<http://www.childsupportlaws.co.uk/different-types-contact-orders.html>)

contest

To challenge or oppose something (a case, an argument, a claim)

Example: *In order to contest the recognition of a decision on divorce, legal separation or annulment of marriage, the court of appeal of the Member State as indicated in the list published in Council Regulation (EC) No 2201/2003 should be addressed.* (https://e-justice.europa.eu/content_divorce-45-ee-en.do?member=1)

court cost/fees

Fees for expenses which must be paid by the parties to a suit, or in some cases, by the losing party.

Example: *The court fees for the consensual legal separation amount to 100 PLN whereas those of divorce to 600 PLN.* (<https://paszowski.eu/divorce-in-poland.html>)

court settlement

Settlement in matters relating to maintenance obligations which has been approved by a court or concluded before a court in the course of proceedings. (Regulation 4/2009)

Example: *On 2 November 1993 the father assumed an obligation under a court settlement to make monthly maintenance payments of ATS 4 800 in favour of his daughter.* (<https://curia.europa.eu/en/actu/communiqués/cp02/aff/cp0211en.htm>)

cross-border case

Case in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised (Regulation (EC) 1896/2006)

Example: *The average cross-border case in the EU still involves the application of two or three different national laws that often lead to results not readily reconcilable with each other.* (https://www.europarl.europa.eu/RegData/etudes/STUD/2015/510003/IPOL_STU%282015%29510003_EN.pdf)

curator

In some jurisdictions (e.g. Scotland), the guardian of a child.

Example: *Currently, the court can appoint a Curator Ad Litem to represent the child's interests in contested proceedings* (<https://www.tfamlaw.co.uk/blog/child-law/an-overview-of-the-children-scotland-bill.html>)

custody

Now referred to as residence in some countries, arrangement establishing who lives with the children and provides daily care. It may also be "joint" or "shared", if the children live part of the time with one parent and part of the time with the other parent.

Example: *The specific system of custody is decided on a case-by-case basis, in accordance with the interests of the minor.* (https://e-justice.europa.eu/content_parental_responsibility-302-es-en.do?member=1)

declaration of enforceability

See *exequatur*.

deed of separation

Contract, usually drawn up by a solicitor, which records an agreement reached in respect of financial matters following separation. (<https://www.levisonmeltzerpigott.co.uk/glossary.php>)

Example: *The wife may, after separation, choose to revert to her maiden name, but this choice must be done by declaration in the public deed of separation* (https://e-justice.europa.eu/content_divorce-45-mt-en.do?member=1)

default

Failure in duty or performance.

Example: *If the maintenance obligation is determined by a court ruling and the maintenance debtor is in default of payment of child and/or partner maintenance, compliance can be enforced* (https://e-justice.europa.eu/content_maintenance_claims-47-nl-en.do?member=1)

defence

Factual denial or assertion of facts or law that counters or negates a claim made by the other part in proceedings.

Example: *When the agreement of one party is lacking or reconciliation proves impossible, the judge orders the respondent to submit their defence within 30 days.* (https://e-justice.europa.eu/content_divorce-45-pt-en.do?member=1)

defendant

Person against whom civil proceedings are initiated. In family cases, the term “respondent” is also used.

Example: *In case the defendant has no permanent residence neither in Greece nor abroad, the court of the district of his/her residence is competent* (<http://www.coupleurope.eu/en/greece/topics/9-which-is-the-competent-authority-to-turn-to-in-cases-of-disputes-and-other-legal-issues/>)

desertion

The voluntary abandonment of one spouse by the other; it occurs when a spouse leaves the marital home for a specified length of time without consent of the other spouse or without a reason. (<https://www.law.cornell.edu/wex/desertion>; <https://www.lexisnexis.co.uk/legal/guidance/desertion>)

disclosure

Process whereby one party is required to provide information to the other party on documents or issues relevant to the claim.

Example: *The first step in the process of dividing the assets is the disclosure of all the financial assets owned by the two spouses.* (<https://www.lawyersireland.eu/divorce-in-ireland-division-of-assets>)

dissolution

Legal process ending a contract of marriage or civil partnership.

Example: *Council Regulation (EC) No 2201/2003 does not cover the patrimonial effects from separation or dissolution of marriage.*

(https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Events/20081211_Brussels_Practising_Family_Law_in_Europe/EN_Zarraluqui.pdf)

divorce

Legal proceedings which end a contract of marriage; the termination of a marriage by legal action. (<https://www.winstonsolicitors.co.uk/family-law-glossary.html>; <https://dictionary.law.com/Default.aspx?typed=divorce&type=1>).

Example: *EU law provides for common rules to work out with which court international spouses should file an application for divorce.* (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice/family-law/divorce-and-separation_en)

domestic violence

Many different facets of abuse within the family, which may be physical or psychological; it may be directed towards the child and/or towards the partner and/or other family members. (<http://www.euromed-justice-iii.eu/document/hcch-2012-mediation-guide-good-practice-under-hague-convention-civil-aspects-international>)

Example: *Mediators should also be aware of the issue of parental alienation that can arise in high conflict divorce or abduction cases and the impact this can have on the views of the child.* (http://euromed-justiceii.eu/files/repository/20100715110425_14.Generalprinciples.HcCH.guidecontact_e.pdf)

emancipation

Legal state by which a child acquires the rights of an adult before he or she is 18 (or otherwise legally of age)

Example: *Children are subject to parental responsibilities until they reach the age of majority or emancipation.* (https://e-justice.europa.eu/content_parental_responsibility-302-pt-en.do?member=1)

enforcement

Execution of a law or a court decision.

Example: *The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.* (Regulation 2201/2003)

evidence

Anything submitted by a party to a case and accepted by a court which may prove or disprove an issue in a case.

Example: *It is possible to reconcile the child's best interests with an*

expeditious procedure based on a minimum standard of evidence but respectful with fundamental rights. (https://www.ejtn.eu/Documents/Themis%202012/THEMIS%202012%20BUCHAREST%20DOCUMENT/Written_paper_Spain2.pdf)

ex parte measures

Measures issued by the court based on one party's request, without the other party having been heard.

Example: *The Court of Justice held that such ex parte measures fall outside the scope of the recognition and enforcement system of the Regulation.* (<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex%3A52009DC0174>)

exequatur

Decision by a national court executing a judgment issued by a foreign court. Also called "declaration of enforceability".

Example: *In Spain, the exequatur procedure is regulated by the new Law on International Legal Cooperation of 2015.* (<https://www.tuexequatur.com/english-1/information/>)

forum

Courts of a given country in which an action is brought.

forum selection agreement

See *choice of court agreement*.

forum-shopping

Practice adopted by some litigants to have their legal case heard in the court thought most likely to provide a favourable judgment.

Example: *The Supreme Court issued its decision today in the case of Villiers v Villiers leaving open the possibility of forum shopping in maintenance cases between Scotland and England as well as other jurisdictions.* (<https://www.weightmans.com/insights/forum-shopping-is-alive-and-well-villiers-v-villiers-supreme-court-decision/>)

foster family

Family with whom a child lives because, for some reason, the child cannot live with his or her family.

Example: *Provisions on the number of children in one foster family aim to ensure the quality of care for children and facilitate the monitoring of foster parents.* <https://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/foster-care>

guardian

Person responsible for making major decisions about such things as what kind of education, health care or religious training the children will receive, and how to manage anything the children may own, such as property or money. Like custody, guardianship can be handled by one parent only, or shared between the parents – which means that both parents will remain involved in making important decisions about the children's future.

Example: *Married parents of a child are joint guardians and have equal rights in relation to the child.* (https://www.citizensinformation.ie/en/birth_family_relationships/cohabiting_couples/legal_guardianship_and_unmarried_couples.html#)

joint custody

Arrangement approved by a court whereby a child is to live with both parents after a separation or divorce, usually in blocks of time (e.g. alternate weeks).

Example: *Since the reform, joint custody is the default regulation after divorce.* (<https://splash-db.eu/policydocument/child-affairs-reform-from-1945-1990-west-germany/>)

judgment:

Decision by a court; in this meaning, it is most usually spelled without the “e”, although the spelling “judgement” may occasionally also be found.

Example: *When the judgment is not in harmony with the child’s opinion, the court must adequately justify its decision.* (<https://www.ejtn.eu/Documents/Team%20Czech%20Republic1%20semi%20final%20B.pdf>)

judicial separation:

Legal process whereby the partners remain married, but no longer live together.

Example: *Judicial separation can be obtained by both of the spouses or by one of them, even in the situation in which the other party does not approve this procedure.* (<https://www.lawyersitaly.eu/judicial-separation-in-italy>)

left-behind parent

The parent who claims that his/her custody rights were breached by a wrongful removal or retention. (<http://www.euromed-justice-iii.eu/document/hcch-2012-mediation-guide-good-practice-under-hague-convention-civil-aspects-international>)

Example: *If the abducting parent and child disappear unexpectedly the left-behind parent will often notify the police and ask them to initiate a border alert.* (https://www.era-comm.eu/EU_Civil_Justice_Training_Modules/kiosk/courses/Family_Law_Module_2_EN/Thematic%20Unit%203/potential_players_2.html)

lump sum provision

Capital payment from one party to the other

Example: *In the event of a change in circumstances, maintenance can be revised upwards or downwards and even terminated. This does not apply where it was paid as a lump-sum provision as part of a divorce.* (https://e-justice.europa.eu/content_maintenance_claims-47-lu-en.do?member=1)

maintenance

Regular payments by one party of a marriage to another (known as ‘alimony’ in the US); such payments can be for the other party, for the children, or for both.

Sources: <https://legal-dictionary.thefreedictionary.com/maintenance>

Example: *Maintenance payments may be modified in the event of substantial changes in circumstances.* (<http://www.coupleseurope.eu/en/spain/topics/5-what-are-the-consequences-of-divorce-separation/>)

marital/matrimonial property

Property and debt that a couple acquire during their marriage. (<https://www.iafl.com/resources/glossary/>). Also called *matrimonial assets*, etc.

Example: *If the spouses, before marriage, have not designated the applicable law, their matrimonial property regime is governed by the internal law of the State in which both spouses establish their first habitual residence after marriage.*

(<https://www.hcch.net/en/instruments/conventions/full-text/?cid=87>)

member state of enforcement

Member State in which enforcement is sought.

Example: *As enforcement procedures are subject to the law of the Member State of enforcement, means of enforcement differ from one Member State to another.* (<https://eur-lex.europa.eu/legal-content/EN/TXT/TML/?uri=CELEX:52014DC0225&rid=1>)

member state of origin

Member state in which a decision, an instrument or an order is issued

Example: *According to Article 24 the jurisdiction of the court of the member state of origin of the decision, whose recognition is sought, may not be reviewed.* (https://www.era-comm.eu/EU_Civil_Justice_Training_Modules/kiosk/courses/Family_Law_Module_1_EN/Module%201/kiosk/dokuments/Thematical_unit_1.pdf)

merits

The substance of a case, regardless of procedural issues.

Example: *This is due to the tendency of the judicial authorities in some signatory states to consider the merits of the original custody proceedings, in flagrant breach of the spirit of the Convention.* (<https://eur-lex.europa.eu/legal-content/EN/TXT/L/?uri=CELEX:92000E001289&from=FR>)

nullity

See *annulment*.

parental abduction

See *child abduction*.

parental responsibility

all rights and duties relating to the person or the property of a child which are given to a natural or legal person by a decision, by operation of law or by an agreement

having legal effect, including rights of custody and rights of access. (<https://assets.hcch.net/docs/f16ebd3d-f398-4891-bf47-110866e171d4.pdf>; also <http://www.euromed-justice-iii.eu/document/hcch-2012-mediation-guide-good-practice-under-hague-convention-civil-aspects-international>).

parenthood

Quality of being somebody's mother or father

Example: *This Regulation should not apply to the establishment of parenthood, since that is a different matter from the attribution of parental responsibility* (<https://eur-lex.europa.eu/legal-content/EN/TXT/DF/?uri=CELEX:32019R1111&from=EN>)

party

Person, or group of persons, involved in proceedings as a litigant.

Example: *Additionally, at the request of a party to the proceedings, the court dealing with guardianship matters may grant an interim measure.* (https://e-justice.europa.eu/content_parental_responsibility-302-pl-en.do?member=1)

paternity

Being a child's biological father (<https://www.iafl.com/resources/glossary/>).

Example: *The case concerned a child born out of wedlock who, together with her mother, filed a paternity suit.* (https://www.echr.coe.int/documents/fs_parental_eng.pdf)

petitioner

Person who issues divorce proceedings, especially in common law jurisdictions. See *claimant*.

Example: *The Regulation it does not apply to the establishment of parenthood, since this is a different matter from the attribution of parental responsibility.* (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:HTML>)

placement

Arrangement where a minor is put under the care of a family other than his or her parents, which considers the minor's needs and strengths and the caretakers' abilities.

Example: *Child placement policies have undergone considerable change in many Western European states in the last decades.* (<https://ecpr.eu/Events/Event/PaperDetails/54326>)

plaintiff

In some jurisdictions (e.g. United States), person who initiates legal proceedings. See *claimant*.

prenuptial/premarital agreement (coll. "prenup")

A contract that two parties enter into in contemplation of marriage which usually establishes the property and financial rights of each spouse in the event of a divorce.

(<https://institutedfa.com/prenuptial-agreements-marriage-contracts-1/>; <https://www.nolo.com/legal-encyclopedia/prenuptial-agreements-what-law-allows-30283.html>)

Example: *In terms of formal requirements, the prenuptial agreement must take the form of an authentic document drawn up before a notary.* (https://e-justice.europa.eu/content_matrimonial_property_regimes-36686-pt-en.o?idTaxonomy=36686&idCountry=pt&lang=en&init=true&member=1&removebanner=true)

prorogation agreement

See *choice of court agreement*.

recognition

Acceptance by the court of one country or jurisdiction of a judgment issued in another country or jurisdiction.

Example: *The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought*

would not allow divorce, legal separation or marriage annulment on the same facts (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R2201>)

removal

Moving a person or thing from one place to another (e.g. "wrongful removal")

Example: *Experience shows that in many cases, the wrongful removal or failure to return (retention of) a child results from lack of knowledge on the part of the so-called abducting parent.* (https://e-justice.europa.eu/content_lawful_removal_of_the_child-289-en.do)

residence

Place where a person where a person habitually lives

Example: *The court will decide in the best interests of the child on your custody rights, visiting arrangements and determine the child's place of residence.* (https://europa.eu/youreurope/citizens/family/children/parental-responsibility/index_en.htm)

respondent

Name given in some jurisdictions to the defendant in family cases. See *defendant*.

retention:

Action of keeping something in one's own hands or under one's own control; continued possession of something

Example: *The child's "habitual residence" is not determined after the incident alleged to constitute a wrongful removal or retention* (<https://www.childabductioncourt.eu/the-hague-convention>)

review

Judicial re-examination of a decision, in order to correct possible errors

Example: *The Applicant sought judicial review of the first administrative decision before the referring court.*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CC0556>)

rights of access/contact

The arrangements for the non-custodial parent to spend time with his / her child(ren); it also includes the right of a non-custodial parent to make inquiries and to be given information concerning the child's health, education and welfare. At present, called "child arrangements" in the UK and "visitation rights" in the United States. (<https://www.iafl.com/resources/glossary/>; <https://www.ipc.on.ca/education/access-to-information/do-non-custodial-parents-have-a-right-to-access-a-childs-school-records/>)

Example: *Brussels IIa has abolished exequatur for two situations, the first of which concerns rights of access (Article 41 Brussels IIa) (http://www.era-comm.eu/Better_Applying_the_EU_Regulations/kiosk/pdf/case_studies/topic2/Case_study_topic2_Introductory_EN.pdf)*

separation

Short for "legal/judicial separation", an alternative to divorce; whilst not ending the marriage, it allows the court to look at the financial arrangements between the parties, and is usually used when the parties have an overriding reason for not wanting a divorce. (of someone, e.g. a guardian or a representative) appointed for a suit, for specific proceedings. (<https://www.iafl.com/resources/glossary/>; <https://dictionary.law.com/Default.aspx?typed=separation&type=1>.)

Example: *Divorce or separation brings the community of acquisitions regime to an end. The result is the dissolution and liquidation of the community property (<http://www.coupleseurope.eu/en/spain/topics/5-what-are-the-consequences-of><https://www.csce.gov/issue/international-parental-child-abduction-divorce-separation/>)*

shared custody

See *joint custody*.

spouse

Person one is married to; husband or wife. In some EU member states, the term applies to a person of the same or of the opposite sex.

Example: *Each spouse should know exactly what are the legal and social implications of the choice of applicable law. (<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex:32010R1259>)*

statutory

Provided or governed by a written law or "statute", e.g. "statutory interest"

Example: *Upon entering into marriage, the statutory matrimonial property regime will become effective also retroactively for the time of the spouses' life partnership preceding marriage. (<http://www.coupleseurope.eu/en/hungary/topics/2-is-there-a-statutory-matrimonial-property-regime-and-if-so-what-does-it-provide>)*

stay

Court order forbidding or postponing some action until some particular event occurs, or until the court lifts such order (e.g. "stay of enforcement", "stay of proceedings")

Example: *At the allocation stage, any of the parties may seek a stay of proceedings to attempt settlement through ADR (https://mediation-net.eu/pdf/books/analysis_concise_text2.pdf)*

submission:

Allegation made by one of the parties (e.g. make submissions to the court).

Example: *Written observations were submitted by the mother, the father, the Lithuanian Government and the Commission, the only parties authorised to make submissions at that stage. (VIEW OF ADVOCATE GENERAL Sharpston of 1 July 2008, Case C-195/08 PPU)*

submit

File, lodge (e.g. submit an application).

substance

Merits of a case.

Example: *The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1. (Council Regulation (EC) No 2201/2003)*

taking parent

The parent who is alleged to have wrongfully removed a child from his/her place of habitual residence to another State or to have wrongfully retained a child in another State. (<http://www.euromed-justice-iii.eu/document/hcch-2012-mediation-guide-good-practice-under-hague-convention-civil-aspects-international>)

Example: *Many children are intentionally misled by the taking parent to hate and distrust the left-behind parent. (<https://www.csce.gov/issue/international-parental-child-abduction>)*

transcript

Official direct and verbatim written record of what was said, as in a court of law or other judicial proceedings, or even private conversations. (<http://www.duhaime.org/LegalDictionary/T/Transcript.aspx>)

Example: *The court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014CP0376>)*

true copy

Certified copy.

Example: *Please supply a photocopy of your minor child's original Civil Birth Certificate that has been certified to be a true copy of the original (<https://www.irishimmigration.ie/wp-content/uploads/2020/11/form-CTZ5.pdf>)*

visitation rights

See *rights of access/contact*.

writ of summons

Court-issued document ordering a person to file an answer to legal proceedings within a given timeframe.

Example: *Cypriot courts may exercise jurisdiction so far as they have local jurisdiction and provided that the defendant has been properly served with a writ of summons commencing an action (https://www.euro-family.eu/documenti/news/psefs_e_book_compressed3.pdf)*

wrongful removal

Removal of a child which takes place a) is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal, or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. (<https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf>).

Example: *In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay (Regulation No 2201/2003)*

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