

## **Training Session No. 1**

### **“Parental Responsibility”**

**BUDAPEST (HUNGARY) | 28 March 2019**

#### **TRAINING PACKAGE**

Programme  
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**4 EU training sessions on family law regulations for  
Cross-border Lawyers And Social Services**

**Training Session No. 1**

**“Parental Responsibility”**

**BUDAPEST (HUNGARY) | 28 March 2019**

**PROGRAMME**

08:30 – 09:00	<i>Registration</i>
09:00 – 09:30	<b>Opening</b> Orsolya Szeibert
09:30 – 10:30	<b>Parental responsibility: general overview</b> Lilla Király
10:30 – 10:50	<i>Coffee break</i>
10:50 – 12:20	<b>Jurisdiction in parental responsibility matters</b> Orsolya Szeibert
12:20 – 13:30	<i>Lunch break</i>
13:30 – 15:00	<b>Law applicable to parental responsibility matters</b> Diletta Danieli and Cinzia Peraro
15:00 – 15:30	<i>Coffee break</i>
15:30 – 17:00	<b>Recognition and enforcement of decisions in parental responsibilities matters</b> Ana Pliner



## **PRESENTATIONS**



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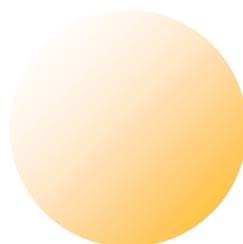
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# Parental responsibility: general overview

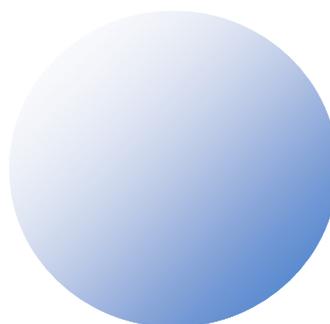
**Dr. Lilla Király**  
Associated Professor of Civil Procedural Law (University of Károli Gáspár) on behalf of ELTE

Training Session No. 1  
Budapest (Hungary)  
28 March 2019

Source: <https://epthinktank.eu/2017/12/07/a-europe-for-mobile-and-international-families>



**13 million**  
Europeans living in another EU Member State



**16 million**  
International couples in the EU

**Some 2.2 million marriages and 946 thousand divorces took place in the EU-28 in 2015**

Source: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Marriage\\_and\\_divorce\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Marriage_and_divorce_statistics)

## Cross border legal cases

PIL instruments come into play whenever a case is characterized by **an international element**, in order to answer the following questions:

- a) which court has international jurisdiction to hear the case? (*jurisdiction*)
- b) which law governs the substantive aspects of the case? (*applicable law*)
- c) under which conditions can a decision issued abroad be recognized and enforced in the requested State? (*recognition and enforcement*)

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## Overview of EU PIL acts in matrimonial matters and parental responsibility

### Brussels regime

(jurisdiction/  
recognition and enforcement)

- Brussels IIa Regulation, for matrimonial matters and **parental responsibility** (Reg. No. 2201/2003)
- Including (law applicable):
  - 1980 Hague Convention (Child abduction) + Article 11
  - 1996 Hague Convention (Child protection)- Article 61

### Rome regime

(law applicable)

- Rome III Regulation, for divorce and legal separation (Reg. No. 1259/2010)

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## **Reg. 1347/2000 (Brussels II)**

Scope of application:

- a) civil proceedings relating to **divorce, legal separation or marriage annulment**;
- b) civil proceedings relating to **parental responsibility** for the **children of both spouses** on the occasion of the **matrimonial proceedings covered by the Reg.**

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## **Reg. 2201/2003 (Brussels IIa)**

- repealing Reg. 1347/2000 (Brussels II)
- concerning **jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility**
- **Not only for the children from marriage**
- civil proceedings relating to **divorce, legal separation or marriage annulment are not necessary**
- applying since 1 March 2005
- binding on all EU MS (including the UK and Ireland) with the exception of Denmark

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## **Reg. 2201/2003 (Brussels IIa)**

### **Scope of application – Art. 1(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) attribution, exercise, delegation, restriction or termination of parental responsibility**

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## **The interplay with the international legal instruments**

### **1980 Hague Convention (Child abduction)**

- entered into force on 1 December 1983
- currently, 98 Contracting States (all EU MS; most recently: Jamaica since 1 May 2017, Pakistan since 1 March 2017, Tunisia since 1 October 2017)
- interplay with **BIIa Reg.** with regard to child abduction (the Reg. **complements** the 1980 Hague Conv. **in intra-EU cases**)

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## 1996 Hague Convention (Child protection)

- entered into force on 1 January 2002
- currently, 48 Contracting States (all EU MS; most recently: Cuba since 1 December 2017, Honduras since 1 August 2018; only signatory States: USA, Canada, Argentina)
- interplay with **BIIa Reg.** with regard to the **law applicable to parental responsibility matters** (not governed by the Reg.)

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## Summarising Conclusions

When addressing a cross-border family dispute:

- **matrimonial matters**
  - jurisdiction: Brussels IIa Reg.
  - applicable law: Rome III Reg.
- **parental responsibility**
  - jurisdiction: Brussels IIa Reg.
  - applicable law: 1996 Hague Conv.
- **international child abduction**: 1980 Hague Conv. + Brussels IIa Reg.
- **maintenance**
  - jurisdiction: Maintenance Reg.
  - applicable law: Maintenance Reg. + 2007 Hague Protocol

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# Contents of this Session

## 1. Practice on Child Protection:

- A. Parental responsibility – e.g. rights of custody, provisional/protecting measures, right of access of the child
- B. Rules on the child abduction - unlawful removal, right of access of the child on abroad
- C. Lawful removal of the child

## 2. Enforcement of Decisions :

- A. Relating to surrender (return) of the child and
- B. The enforcement of the right of access

## 3. Cooperation among Ministries as Central Authorities and the Court

- e.g. Ministry of Justice (Budapest)
- e.g. Ministry of Human Resources (Budapest)

## 4. General Topics to the Brussels IIa Regulation

## 5. Case Law

## 6. Conclusions

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## 1. Practice on Child Protection: *A. Parental responsibility*

- all rights and obligations towards a **child and its assets**.
- Although this concept varies between the Member States, it usually covers
  - **custody** and
  - **visiting rights**

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## What is custody ?

- As long as the parents live together, they usually hold custody over their children jointly. However, if the **parents get divorced or split up**, they need to decide how this **responsibility will be exercised in the future**.
- The parents may decide that the child shall live alternately with both parents, or with one parent. In the latter case, the other parent usually has a right to visit the child at certain times.
- Custody rights also cover **other rights and duties** linked to the **education and care of the child**, including the right to look after the child and his/her assets. The parents usually have the parental responsibility for a child, but parental responsibility may also be given to an institution to which the child is entrusted.

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## Who decides on the custody and visiting rights?

- The **parents** may decide on these matters **by mutual agreement**. A mediator or lawyer can help if the parents do not manage to reach an agreement.
- If the **parents are unable** to reach an agreement they may have **to go to court**. The court may decide that both parents shall have custody over the child (**joint custody**) or that one of the parents shall have custody (**single custody**). In the case that only one parent has custody, the court may decide on **visiting rights for the other parent**.
- In the case of an **international couple**, **EU rules** determine which court has the responsibility to deal with the case..
- The main aim is **to avoid** both parents addressing the court in their own country and **two decisions being issued for the same case**. The principle is that the responsible court is the court in the country where the child habitually resides.

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## Will the decision of the court be enforced in the other EU country?

- A mechanism for the recognition and enforcement of decisions ensures that the decision of the court is applied in other EU countries once it has been issued. This makes it easier for those with parental responsibility to exercise their rights.
- In particular, a judgment on access rights will be recognized in another EU Member State without any special procedure being required, thus supporting the relationship between the child and both parents.

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## Which EU rules apply?

- The rules settling cross-border matters between children and their parents are part of the **Brussels IIa Regulation (with international conventions)**
- These rules apply equally to all children, whether they are born in wedlock or not.
- The Regulation has applied since 1 March 2005 in all EU countries except Denmark

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## 1. Practice on Child protection

### B. Parental child abduction

- an international couple with children
  - are separating
  - one parent wishes to return to home country and take the child
  - without the consent of the other parent or the court.

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## Which court is responsible?

- The court in the country where the **child had his/her habitual residence before abduction** will remain responsible until the abduction case has been settled.
- avoiding parents abducting their child in the hope of getting a more favorable judgement before the court in their own country, where the child was taken.

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## How can a parent get an abducted child back?

- Central Authorities exist in all EU countries (except Denmark) to assist parents who are victims of cross-border child abduction.
- It is possible to launch a procedure to return the child.
- In this case, the court needs to rule on the matter within **six weeks**.
- The court should give the **child** the **opportunity to be heard** during the proceedings, unless this appears inappropriate due to his or her age and degree of maturity.

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## Can a court in the country where the child was abducted to refuse the return of the child?

- The court in the country where the child was abducted to can only object to the return of the child if there is **a serious risk** that return would expose the child to **physical or psychological harm**
- However, the return cannot be prevented if **adequate arrangements** have been made to **protect the child**.
- If a court finds that the child should not be returned, it must contact the court in the country where the child was abducted from.

### Will the decision of the court be automatically enforceable?

- The final ruling by the court in the country of origin is automatically recognized and enforceable in the other EU country without the need for a declaration of enforceability (“**abolition of *exequatur***”), provided that the judge has issued a certificate.

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### 1. Practice on Child Protection: C. Lawful removal of the child

- conditions in which the parents can move across borders with their children or
- the steps they should take when travelling abroad with their child in a lawful way.

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## 4. General topics to the Brussels Ia Regulation

1. Jurisdiction of the Court
2. Recognition and Enforcement of the Court
3. Cooperation between Central Authorities and the Court

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### Types of proceedings

- **Court Proceedings in**
  - Matrimonial matters
  - Matters of wrongful removal or retention of the child
  - Recognition of the foreign court decisions
  - Mandatory mediation proceeding at the Hungarian court
- **Public Administration Proceedings in**
  - e.g. rights of custody, right of access of the child, provisional/protective measures inside Hungary
  - Contacts among the courts by central authorities
- **Enforcement Procedure of the Bailiff, Police, Child Care Authority**
  - Matters of wrongful removal or retention of the child
  - access of the child, provisional/protective measures



## The Hungarian system of procedures in matters relating to parental rights of custody

- **1. Court proceeding**
  - Court decisions on the establishment, exercise, restriction, termination and restitution of the parental right of custody (first, second instance proceedings and review as an extraordinary legal remedy).
  - Proceedings for the return of the child, over which the Central District Court of Pest has exclusive jurisdiction in Hungary (first, second instance proceedings and review as an extraordinary legal remedy).
  - Judicial approval of decisions made in (obligatory) court mediation procedures
- **2. Administrative proceeding**
  - **Proceedings of the guardianship authority**
    - First and second instance proceedings of the guardianship authority
    - Judicial review of administrative decisions passed by the guardianship authority ("third instance proceedings")
    - Legality supervision procedure by the prosecution service as the organ having a supervisory function over the guardianship authority's measures taken for the child's protection.
    - The supervisory power of the Ministry of Human Resources over the administrative procedure of the guardianship authority.
    - Mediation procedure for the child's protection
  - **Contact keeping between central authorities**
    - Ministry of Justice as a central authority (cases falling within the scope of the Hague Convention of 1980-Third states)
    - The Ministry of Human Resources (according to Council Regulation (EC) 2201/2003 in cases within the EU)
- **3. Enforcement proceedings**
  - **Judicial enforcement proceedings (handing over the child)**
    - Recognition and ordering enforcement of a foreign judgment (Exclusive jurisdiction lies with district courts which operate at the seat of courts of justice, and in Budapest with the Central District Court of Buda)
    - Procedures by independent court bailiffs (enforcement proceedings involve Hungarian court bailiffs, the police, the guardianship authorities)
  - **Administrative enforcement proceedings (measures in the interests of the child's protection, enforcement of rights of access to the child removed to Hungary)**
    - Proceedings by the guardianship authority
    - Child protection mediation
    - (Supervisory) proceeding by the prosecution

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## 5. Case law in court proceedings I. child abduction Article 11

In order to prevent the ordering of the return, the parent who has brought the child to Hungary arbitrarily, in the vast majority of cases, usually refers to **Article 13 (b) of the Hague Convention (1980)** in his/her defence, namely that his or her return would expose the child to **physical or psychological harm**. However, Hungarian judicial practice considers the refusal of the request for the return of the child as an exceptional decision and interprets it rather restrictively. Denial of the return of the child on the basis of Article 13 (b) happens relatively rarely, only in well-founded cases.



**Case law in court proceedings II.**  
**child abduction**  
**Article 13 (b)**

- In general, in the case of a young child, respondents refer to the possibility of separation from the mother, which would cause serious harm to the child. According to Hungarian judicial practice, the **low age of the child itself** cannot constitute an obstacle to the return of the child; however, if concerning the case there is additional evidence and the additionally established facts are sufficient to confirm **the risk of emotional and physical harm**, the court shall refuse the request for the return of the child (BH 1998/86., Curia Pfv.II.20.018/2012.).

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**Case law in court proceedings III.**  
**child abduction**  
**Article 13 (b)**

The courts refused the return of the four-year-old child to Spain at all three instances based on **Article 13 (b) of the Hague Convention**. This is explained by the fact that in Spain, which constituted the child's former habitual residence, the mother had neither accommodation, nor a job, from which she could earn an income. Her stay in a home for mothers would have been ensured only for 6 months and she would not have been able to rent an apartment from the support paid by the applicant. Thus, ordering the return of the child would have endangered the healthy development of the child and would have placed her in an intolerable situation, since she would have been sent back to such circumstances where the appropriate living conditions were not ensured for her, with special regard to the fact that the father lived in Norway. The Spanish central authority only envisaged the possible taking of protection measures in general without any specific details, therefore there were not sufficient data for the court to establish what accommodation, support, or aid would be provided for the mother and the child. Therefore, the courts exceptionally refused the request for the return of the child.

(KIM XX-NMFO/GYELV2/601/2013., Central District Court of Pest 24.Pk.5000040/2013/18., Municipal Court of Budapest 50.Pkfv.634.214/20013/2., Curia Pfv. II.21.029/2013/4.),

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**Case law in court proceedings IV.**  
**child abduction**  
**Article 11 (4)**

the Hungarian court refused to grant the petition for the return of a 3-year-old child, because the Central Authority of Cyprus informed the first instance court only about the fact that there were three criminal procedures going on against the father for different crimes in Cyprus. Furthermore, to the questions of the first instance court (e.g.: about the provision of future protection for the child) the central authority of Cyprus made no statement in reply.

In addition, the father had failed to appear before the court 6 times and the mother showed a photo of the flat where the parents had lived together earlier, which – due to its condition - seemed unsuitable for bringing up a child.

(Central District Court of Pest Pk. 500.062/2010, Municipal Court of Budapest No. Pkfv. 637.192/2010) **Summary - the Hungarian court did not consider sufficient the information supplied by the foreign central authority .**

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**Case law in court and public administration proceedings I.**

transfer a case by Article 15

**Forum non conveniens**

- According to Article 2 point 1 of the Regulation: the term '**court**' shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;
- during the administrative proceedings of the EMMI, as central authority (and also the supervisory authority of the Hungarian guardianship authority), cases are often transferred to a foreign authority better placed to hear the case, or cases are also transferred from foreign authorities to the Hungarian guardianship authority with the permission of the EMMI (Ministry of Human Resources).



## Case law in public administration proceedings I.

### Forum non conveniens

#### Article 15

- the case was commenced in England (High Court of Justice, Family Division, Leeds District Registry Case No: -DG13C00051) The child protection service of the city council of Kirklees turned to the EMMI that **the Hungarian citizen mother gave birth to her child in England, then she left the child in England and travelled to Hungary.**
- The EMMI, as the central authority, made a decision granting the transfer of the case and thus, the competent Child Protection Centre of Fejér County took over the further administration of the case. The EMMI had two reasons for granting the transfer:
  - the placement of the child with the Hungarian relatives seemed expedient, since in England the child did not have any relatives,
  - a Hungarian citizen can be adopted only through a Hungarian authority according to Hungarian law.
- The English central authority requested the EMMI- as central authority- to **prepare a social inquiry report** on the family and to **initiate an administrative (guardianship) proceeding** at the time of the return of the child to Hungary. The EMMI, as the supervisory authority of the guardianship authority, ordered the territorially competent guardianship authority of Sárbogárd to prepare the social inquiry report.
- As a result of the social inquiry report, it turned out that the Hungarian relatives of the child were not suitable for bringing up the child. The English authority was informed about this fact through the EMMI.
- The child was brought to Hungary by the employees of the District Guardianship Authority of Sárbogárd, where the guardianship authority initiated the procedure for the placement of the child with foster parents. In the meantime the child was placed under child protection guardianship (if there is no contact with the parents for half a year, the child can be adopted, if no regular contact is maintained by the parents, the minor child can be adopted after one year). (Case No. 6473/2014/GYERGYAM)

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## Case law in public administration proceedings II.

### Placement of the child in another Member State

#### Article 56

- **In Hungary a foster parent** undertakes the care of a **child of German citizenship for a specific period of time (1-2 years)**. The Hungarian foster parent has a relationship with the German authorities, the German government finances the costs, the purpose of this measure is **to remove the German child from the German environment and resocialize the child in another country ("re-introduce" the child to the world of accepted social norms) with a pedagogical aim**. It is cheaper and more efficient than placement in a reformatory institution in Germany. The goal of the educational program is to remove the children from their environment where they are sexually harassed or to provide placement for children suffering from alcohol and drug problems. Children may participate in this program from the age of 12 (the children and their parents may choose between this solution or a juvenile detention centre). Contact with the German parents is only possible in the form of written letters, **the parents are not allowed to meet their children either in Hungary or in Austria, where they attend school.**
- From Hungary children are not sent abroad, this purpose is realized by the **Hungarian measure of supervised care**: the child has no room for manoeuvre – he/she cannot leave the building, there is even an option to confine the child - but parents are ensured access to their child. **(Case No. 40342/2013GYERGYAM)**

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## 6. Conclusions

**6 shortcomings** in need of improvement, **mainly in parental responsibility matters**

- 1) child return procedure
- 2) placement of the child in another State  
requirement of *exequatur*
- 3) hearing of the child
- 4) actual enforcement of decisions
- 5) cooperation between Central Authorities

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## Useful links

- European e-Justice Portal:  
<https://e-justice.europa.eu/home.do>
- On family matters:  
[https://e-justice.europa.eu/content\\_family\\_matters-44-en.do](https://e-justice.europa.eu/content_family_matters-44-en.do)
- European Judicial Network (EJN) in civil and commercial matters:  
[https://e-justice.europa.eu/content\\_ejn\\_in\\_civil\\_and\\_commercial\\_matters-21-en.do?init=true](https://e-justice.europa.eu/content_ejn_in_civil_and_commercial_matters-21-en.do?init=true)
- EU law:  
<http://eur-lex.europa.eu>
- EU case law:  
<http://curia.europa.eu>
- HCCH (Hague Conference on Private International Law)  
<https://www.hcch.net/en/home>

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## Useful links

- EUROPEAN CHILDREN AND THE DIVORCE OF THEIR PARENTS
- [http://www.figlipersempre.com/res/site39917/res666721\\_europeanchildren2.pdf](http://www.figlipersempre.com/res/site39917/res666721_europeanchildren2.pdf)
- Parental relocation Free movement rights and joint parenting
- <https://webcache.googleusercontent.com/search?q=cache:Jky1CaDkYKMJ:https://www.utrechtlawreview.org/articles/10.18352/ulr.67/galley/67/download/+&cd=11&hl=en&ct=clnk&gl=ch>
- Beaumont P, Walker L, Holliday J (2016a) 'Conflicts of EU Courts on Child Abduction: The reality of Article 11(6)-(8) proceedings across the EU' 12 Journal of Private International Law 211.  
[http://www.abdn.ac.uk/law/documents/CPIL\\_Working\\_Paper\\_No\\_2016\\_1.pdf](http://www.abdn.ac.uk/law/documents/CPIL_Working_Paper_No_2016_1.pdf)

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# Thank you



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## Jurisdiction in parental responsibility matters

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Training Session No. 1  
Budapest (Hungary)  
28 March 2019

## Contents of this session

- 1) Basic situations
- 2) Brussels IIa covers 'civil matters'
- 3) Structure of jurisdictional rules in parental responsibility cases
- 4) Art 8 – habitual residence
- 5) Cases
- 6) Art 9 – continuing jurisdiction of former HR
- 7) Art 12 – prorogation of jurisdiction
- 8) Cases
- 9) Art 13 – child's presence
- 10) Art 15 – transfer to a court better placed
- 11) Art 20 – provisional matters

## 1) Basic situations

international situation – international factor  
concerning a **child**

and **parental responsibilities**

the question: **which MS has jurisdiction?**

aim is to provide

clear answer

clear guidelines

transparent method

in the child's best interests

key point is the requirement of **proximity**

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## 1) Basic situations 2

**habitual residence** in the foreground

the child's nationality does not matter too much

requires a different attitude

the rules on jurisdiction are mandatory

a lot of different situations -

- parents have different nationalities and they live as a family in one MS
- parents have same nationality but they live as family in third country
- the child lives with one parent
- the state will intervene

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## 1) Basic situations 3

**habitual residence** in the foreground

parents can be spouses, cohabitants or in no partnership at all

legal dispute can be between parents or parents and state (or even other relatives)

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## 2) Civil matters

**Preamble (7) and Art 1(1)**

civil matters

close connection to parental responsibilities

civil and public matters impact

**broad interpretation is needed**

**confirmed by the CJEU**

**'C' C-435/06 [2007]**

**'A' C-523/07 [2009]**

*decision ordering a child to be taken into care*

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### 3) Structure of regulating the jurisdiction

If a court is seised – it examines its jurisdiction

(Art 17)

- 1) Is there any jurisdiction acc. to Art 8? (general jurisdiction)
- 2) If not, is there any jurisdiction acc. to Art 9, 10 12, 13? (special grounds)
- 3) Transfer to the court better placed (Art 15)
- 4) If not and other MS' court has  declares the lack of jurisdiction
- 5) Art 14 residual jurisdiction

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### 4) General jurisdiction – Art 8, child's habitual residence

*The courts of the MS shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that MS at the time the court is seised.*

Basis – the most appropriate forum due to its **proximity to the child**

No definition – uniform and autonomous interpretation is needed

Original idea is that one HR exists which is not hard to determine

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## 4) Art 8 – habitual residence

The existing definitions in national rules/other international documents **cannot** be used  
CJEU decisions provide some guidelines  
but it means a **case-by-case** basis  
MS should use the **same standards**  
**Difference** in the cases

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## 4) Art 8 – HR

Which factors are important?

Which is more important?

fact

intention

Whose intention is more important?

parent(s)' intention

child's intention

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#### 4) Art 8 – habitual residence contra Art 13 (child's presence)

The **physical presence alone** of the child in a Member State, as a jurisdictional rule alternative to that laid down in Article 8 of the Regulation, is not sufficient to establish the habitual residence of the child.

(Case 'A')

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#### 5) Art 8 – habitual residence 2

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. It is **for the national court to establish** the habitual residence of the child, taking account of all the circumstances specific to each individual case.

(Case 'A')

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### 5) Art 8 – habitual residence 3

The child's age may be taken into consideration both in the context of examining the loss of a habitual residence and in that of the acquisition of a new habitual residence. As a very young child is particularly dependent on his or her mother, who constitutes his or her 'life horizon', it is clear that the mother's wish lawfully to leave one Member State to settle or resettle in another Member State is a crucial factor in assessing the loss of that child's habitual residence. The child's extreme youth implies, moreover, that the conditions for her integration into her new family and social environment are likely to be satisfied very quickly.

That primary consideration of the wish of the person with sole parental authority does not in any way imply that there is no need to take other factors into account.

(Case Mercredi, C-497/10 PPU)<sup>13</sup>

### 5) Art 8 – HR as a fact in case of a child who was born 'abroad'

If a child has been born and has lived continuously with her mother for several months, in accordance with the joint wishes of her parents, in a Member State other than that where those parents were habitually resident before her birth, the initial intention of the parents with respect to the return of the mother, together with the child, to the latter Member State cannot allow the conclusion that that child was 'habitually resident' there, within the meaning of that regulation.

(Case OL PQ C-111/17 PPU)

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## 5) Art 8 – HR as a fact in case of infant – first part

### Decisive factors are:

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

(Case HR, C-512/17)

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## 5) Art 8 – HR as a fact in case of infant – second part

### NOT decisive factors are:

- the stays which the parent who, in practice, has custody of the child has spent in the past with that child in the territory of that parent's Member State of origin in the context of **leave periods or holidays**;
- **the origins of the parent in question, the cultural ties** which the child has with that Member State as a result, and the parent's relationships with family residing in that Member State; and
- **any intention the parent** has of settling in that Member State with the child in the future.

(Case HR, C-512/17)

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## 5) Art 8 – HR as a fact

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

(Case UD v XB, C-393/18 PPU)

17

## 5) Art 8 – some issues also upon national cases

- I. Moving abroad with family – **intention of final settlement?**
- II. Having a registered address - **has it any meaning?**
- III. Leaving property behind in the country of origin – **has it any meaning?**
- IV. Possibility of having **two HRs?**

18

## 5) Art 8 – some issues also upon national cases 2

- I. **Child's dependence** upon the parent's (primary caregiver's) intention?
- II. Importance of the **child's age**
- III. **Infants** – serious dependence
- IV. **Children in school-age** – independent integration
- V. **Child's opinion** – hearing of the child
- VI. **Child's HR** – children's HR (?)

19

## 6) Art 9 – continuing jurisdiction of the child's former HR

- I Child's lawful move from one MS to another one
- II acquires a new HR
- III holder of access rights has his/her HR in that former state
- IV former HR's MS retain jurisdiction
- V three-month period long
- VI with the aim of modifying a judgment on access rights issued in that Member State before the child moved

20

## 6) Lawful – HR

Art 8-9

Art 10-11 wrongful removal or retention of child

Joint parental responsibilities as a tendency

Consequence – both parents have PR

Lawful removal requires the parents' agreement

21

## 7) Art 12 – prorogation of jurisdiction

alternative forum for parental responsibility proceedings

two different jurisdictional ground

common point is the acceptance of the jurisdiction of the court

one is – **divorce court**

some concentration of legal questions

procedural economy

other is – **other court**

interest of the child

some respect of party-autonomy

22

## 7) Art 12 (1) – divorce court

The courts of a MS exercising jurisdiction by virtue of **Article 3** on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

- 1 at least one of the spouses has parental responsibility in relation to the child
- and
- 2 the jurisdiction of the courts 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 seized and is in the superior interests of the child

23

## 7) Art 12 (1) – divorce court

Strong link between the PR case and the divorce court

1 At least one spouse has parental responsibility (tendency – both of them have)

2 Acceptance

3 Superior interests of the child

judicial discretion

commentaries – if 1 and 2 is fulfilled „it is difficult to imagine that the exercise of jurisdiction would not be in the child’s interest

24

## 7) Art 12 (3) – other court

The courts of a MS shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

- 1 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;
- and
- 2 the jurisdiction of the courts **has been accepted expressly or otherwise in an unequivocal manner** by all the parties to the proceedings at the time the court is seised and is in the **best interests of the child**

25

## 7) Art 12 (3) – other court

General exception

Extension of party autonomy

1 **Substantial connection** with some examples

2 **Acceptance**

3 **Child's best interests**

judicial discretion

difficult to see when it is not in the child's best interest

**(meaning of „best interests)**

26

## 8) Art 12 (3) – other court

### No acceptance

where the defendant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first proceedings, **pleads the lack of jurisdiction** of that court

(Case L v M, C-656/13)

27

## 8) Art 12 (3) – other court

### No acceptance

solely because the **legal representative** of the defendant, appointed by those courts of their own motion in view of the impossibility of serving the document instituting proceedings on the defendant, **has not pleaded the lack of jurisdiction** of those courts

(Case Gogova, C- C-215/15)

28

## 8) Art 12 (3) – other court

the **joint lodging of proceedings by the parents** of the child before the courts of their choice is an **unequivocal acceptance** by them of that court;

the fact that the residence of the deceased at the time of his death, his assets, which are the subject matter of the succession, and the liabilities of the succession were situated **in the Member State of the chosen courts leads**, in the absence of matters that might demonstrate that the prorogation of jurisdiction was liable to have a prejudicial impact on the child's position, to the conclusion that that prorogation of jurisdiction **is in the best interests of the child**.

(Case Saponaro, C-565/16)

29

## 8) Acceptance

The acceptance is a crucial issue

What is **deemed to be an unequivocal acceptance**

not contesting jurisdiction

not contesting it while having a lawyer

not contesting while being there personally

Real acceptance  'presumption' is enough?

30

## **8) Child best interests**

It is rarely scrutinized although important

**Real investigation**

national examples

CJEU judiciary (?)

**Right to be heard?**

31

## **9) Jurisdiction based on the child's presence**

No HR can be determined

Art 12 cannot be applied

The court of the MS where the **child is present**

32

## 10) Transfer to the court better placed to hear the case

It was a new form of judicial cooperation

Transfer of the case

1 child has particular connection to that MS

2 would be better placed to hear the case

3 it is in the best interests of the child

Examples

33

## 10) Transfer to the court better placed to hear the case

In order to determine that a court of another Member State with which the child has a **particular connection** is better placed, the court having jurisdiction in a Member State must be satisfied that the transfer of the case to that other court is such as **to provide genuine and specific added value to the examination of that case**, taking into account, inter alia, the rules of procedure applicable in that other Member State;

- in order to determine that such a transfer is in the best interests of the child, the court having jurisdiction in a Member State must be satisfied, in particular, **that that transfer is not liable to be detrimental to the situation of the child**

- (Case Child and Family Agency v J. D., C-428/15) <sup>34</sup>

## 11) Provosional – protective - measures

In **urgent** cases

„measures in respect of persons or assets in that State 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”.

Exceptional rule

35



### Partnership



UNIVERSITÀ  
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# Thank you!

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 <p style="text-align: center;"><b>Partnership</b></p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p><b>UNIVERSITÀ di VERONA</b> <small>Università di Scienze GIURIDICHE</small></p> </div> <div style="text-align: center;">  <p><b>UNIVERSITÀ DEGLI STUDI BICOCCA</b></p> </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  <p><b>Universidade do Minho</b> <small>Escola de Direito</small></p> </div> <div style="text-align: center;">  <p><b>LIETUVOS TEISĖS INSTITUTAS</b></p> </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  <p><b>ELTE LAW</b> <small>FACULTY OF LAW</small></p> </div> </div>	<h2 style="text-align: center; color: blue;">Law applicable to parental responsibility matters</h2> <p style="text-align: center;"><b>Diletta Danieli</b> Post-doc Research Fellow in EU Law and <b>Cinzia Peraro</b> Post-doc Research Fellow in EU Law</p> <p style="text-align: center; margin-top: 40px;">Training Session No. 1 Budapest (Hungary) 28 March 2019</p>
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## Case (1)

An **Austrian woman** and an **Italian man** got married in Italy in 2010, and since then, have been habitually **residing in Milan (Italy)**.

They had a **son** (Austrian and Italian national), born in Italy in 2011 and habitually resident with them.

According to the **Italian law**, both parents hold parental responsibility over the child since his/her birth and they exercise it jointly taking into account his/her capabilities, attitudes and desires (cp. Article 316 of the Italian Civil Code).

Their marriage started to break down.

On **15 September 2016**, the wife filed for separation and regulation of custody and access rights of the child before the **Tribunal of Milan**. She further pleaded for the award of the family home in her favor.

- The husband wants to enter an appearance before the court and asks our legal assistance especially on how to address the **custody issue**.

3

## **Case (1) Questions**

Assume the Tribunal of Milan (EU judge) has jurisdiction over the parental responsibility claims by virtue of Art. 8 of BIIa Reg. (HR of the child).

- 1. Which legal instrument regulates the law applicable to these claims?**
- 2. Which Article is applicable to our case?**

4

## Case (1)

### Question 1

**Which legal instrument regulates the law applicable to PR claims?**

5

**Is there an EU legal instrument?**

- In the **EU** legal order, **no EU PIL instrument** regulates the **applicable law to parental responsibility matters**

**(Brussels IIa Regulation only** provides for rules concerning jurisdiction, recognition and enforcement of decisions, and co-operation between central authorities).

**Is there an international legal instrument?**

- the **1996 Hague Convention**

6

## The 1996 Hague Convention

### Definitions:

- **parental responsibility** (art. 1(2))
- **measures of protection** (arts. 3-4) (excluded: among others, maintenance, succession, social security, public measures of a general nature in matters of education or health)
- Minors: children until they reach age of 18 years (art. 2)

**Jurisdiction:** arts. 5 to 14 (habitual residence of the child)

**Applicable law:** arts. 15 to 22

**Recognition and enforcement:** arts. 23 to 28

**Co-operation:** arts. 29 to 39

**General provisions:** arts. 40 to 56

**Final clauses:** arts. 57 to 63

7

- BIIa Reg and 1996 HC cover similar aspects
- Their interplay
- And in particular with regard to the applicable law

## The interplay between BIIa Regulation and the 1996 HC

- not regulated in the context of specific provisions on the applicable law, but rather **on a general level:**



**Arts. 61-62 BIIa, contained in Chapter V 'Relations with other instruments'**

8

## **Art. 61 BIIa**

The **Regulation supersedes** the 1996 HC whenever

- a) the **child** concerned has his/her **habitual residence on the territory of a MS**
- b) with regard to the **recognition and enforcement of a judgment** given in a court of a MS on the territory of another MS, even if the child concerned has his/her **habitual residence on the territory of a third State** which is a **contracting Party** to the Convention

9

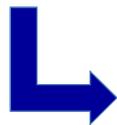
## **Art. 62 BIIa (residual rule)**

The **1996 HC** shall continue to **have effect** in relation to **matters not governed by the Regulation** (i.e. applicable law)

10

## Art. 52(2) of the 1996 HC

- Contracting States may **conclude further agreements** that contain provisions on **matters regulated by the Convention**



the possibility of an interference between different legal sources regulating parental responsibility matters was also expressly recognised in the 1996 HC

11

- The choice of **not regulating the law applicable** to parental responsibility has been **confirmed** also in the **Recast Proposal**
- the **interplay** between the two instruments remains **governed on a general basis**, and the main coordination clauses provided by the current Art. 61(1) are reproduced in Art. 75(1) of the Recast
- **two further levels of coordination** are provided in paras. 2 and 3 of Art. 75

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**Art. 75(3) BIIa Recast** (to reiterate the primacy of the jurisdictional regime laid down in the Regulation over that envisaged in the 1996 HC)

- **when applying Chapter III – Applicable Law** of the 1996 HC in proceedings before an authority of a MS, the reference in **Art. 15(1) of the 1996 HC** to ‘the provisions of [its] Chapter II’ (jurisdiction) shall be **read as ‘the provisions of Section 2 of Chapter II of the Regulation’** (rules on jurisdiction in matters of parental responsibility)

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➤ **The 1996 HC as an international instrument applies only between Contracting Parties.**

➤ **Which States apply the 1996 HC?**

- as of today, it is in force in **47 States**
- most recently: Turkey (since 1.02.2017), Cuba (since 1.12.2017), Honduras (since 1.08.2018)
- Future States: Fiji (from 1.04.2019), Paraguay (from 1.07.2019), Nicaragua and Guyana (from 1.12.2019)
- only signatory States: Argentina, USA and Canada
- Brazil is not a contracting party.

‘Entry into force – EIF’: the relevant date for the application of the given legal instrument at the international level

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- **All EU Member States** are (now) **Contracting States** of the 1996 HC
  - Denmark, having opted out the Brussels IIa regime, is bound to the Convention in its capacity as member of the HCCH
  - Italy was the last MS to ratify the Convention (EIF: 1.1.2016)

(when the 1996 HC is not applicable, each MS has to refer to its **domestic PIL statutes** to determine the law applicable to parental responsibility matters)

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### **Putting into practice**

- The **1996 HC** is an **international legal instrument**, and **remains as such** also when applied by EU courts to determine the law applicable to parental responsibility matters,
- it follows that the **applicability** of the 1996 HC in the given dispute has to be **preliminarily verified from an international law perspective**

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It means that the **preliminary question** that all EU counsels and judges have to ask when approaching a parental responsibility claim to which the 1996 HC might apply, is **“are the States involved in the dispute Contracting States of the 1996 HC?”**

(‘States involved’: it is necessary that an international element exists, e.g. nationality of the parties, their habitual residence, properties, etc.)

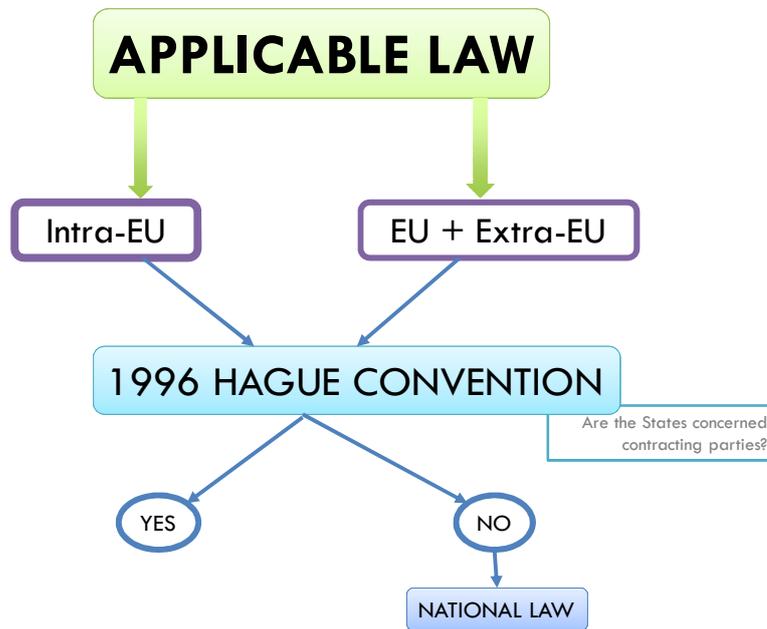
- **YES**: the **1996 HC** is **applicable**
- **NO**: **national law of the forum** is **applicable** (residual role), in particular the relevant national **PIL statutes to determine the LA to PR matters**

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**...with a little help from the EU**

- As a result of the **EIF of the 1996 HC in all EU MS**, the **preliminary question** regarding the applicability of the Convention from an international law perspective **always finds an answer in the positive**
- therefore, the **1996 HC** is the **only legal instrument** to determine the law applicable to parental responsibility matters **whenever the States involved in the dispute are EU MS**
- **BUT** the question should not be forgotten in case a third State is (also) involved

18



## Case (1)

### Answer to Question 1:

The 1996 HC is applicable because the States involved, Austria and Italy, are contracting parties.

**Case (1)**  
**Question 2**

**Which Article is applicable to  
our case?**

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**The 1996 HC provisions on the applicable law**

The competent  
authority

**Art. 15**

Attribution/extinction/  
exercise/modification/  
termination of parental  
responsibility (also under  
**Art. 18**)

The parties

**Art. 16**

Attribution/extinction

**Art. 17**

exercise

**Art. 18**

modification/termination

### **Art. 15 of the 1996 HC**

(1) **In exercising their jurisdiction** under the provisions of Chapter II, the authorities of the Contracting States shall apply their **own law**.

(2) However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has **a substantial connection**.

(3) If the child's habitual residence **changes** to another Contracting State, the law of that other State governs, from the time of the change, the **conditions of application of the measures** taken in the State of the former habitual residence.

23

### **Art. 15(1): general rule**

principle of **coincidence between *forum* and *ius***

- the authorities of Contracting States (having jurisdiction under this Conv.) shall **apply their domestic law** (i.e. the law they are most familiar with)
- This law shall govern all the **measures** covered by the Convention (see **art. 3**)

24

## Case (1)

### Answer to Question 2

- In our case, **Art. 15(1)** may be **applied** because this provision shall be interpreted also as referring to the BIIa Reg., thus the Italian judge shall apply its own law (Italian law).

25

### **Art. 15(2): exception to the general rule**

(narrow interpretation)

- as the **protection** of the **person** or the **property** of the child requires, authorities may apply or take into consideration the **law of another State** (even a **non-Contracting State**) with which the situation has a **substantial connection** (even if the child is not physically there)
- no clarification of 'substantial connection' (nationality? place where the properties are located?)
- the **child's best interests** is paramount in the application of this provision

26

## Case (1)

- In our case, **Art. 15(2)** is **not applicable** because there are **no significant elements** pointing to a substantial connection with another Contracting State.

27

## Case (1) - Variation (1)

On **15 June 2017**, the **Tribunal of Milan** issued its decision, declaring the separation and granting to both parents the **joint custody** of the child (which, under Italian law, is the ordinary custody regime following the parents' separation or divorce, while the sole custody should be granted only upon certain conditions). The child should be **placed with the mother**, who was also awarded the Milan family home where she was supposed to live with the child. Further, the **father** was granted the **rights of access** to the child to be exercised according to a specific schedule (on Saturdays and Sundays the child would be staying with the father).

28

### Case (1) - Variation (1)

**After some months**, the mother was planning to relocate to Austria with the child, and spent several holidays in Austria in her family home (together with the child) in order to arrange the practicalities (e.g. the home, the child's enrolment in school, healthcare). The **relocation** was supposed to take place as of September 2018, so the child could have started school **in Austria**.

The father objected to the relocation.

On **3 September 2018** the mother lodged an application before the **Tribunal of Milan**, seeking **permission to relocate**.

29

### Case (1) - Variation (1)

- The father asks for our legal assistance to appear before the court, contest the mother's application and **claim a modification of his rights of access** (an additional weekday, besides Saturdays and Sundays).
- **Question: which article is applicable to this last claim?**

30

## Case (1) - Variation (1)

### Answer

- We must refer to **Art. 15(2)** to determine the law applicable to the **modification of the rights of access following the relocation** of the mother and the child.

Therefore, the Italian judge may also consider the **Austrian law** to determine the access rights of the father with a view to framing the decision according to the regime in which it will have effect.

31

### **Art. 15(3): law applicable to the conditions of application of the measures in case of change of habitual residence**

- a change in the child's habitual residence (to another Contracting State B) will result in a change of the authorities having jurisdiction (Art. 5(2)),
- this involves a **change in the law governing the conditions of application of the measures taken in the State A of the former habitual residence.**

32

## Art. 15(3):

**examples of conditions of application of the measure taken in the former State of habitual residence (A) and then governed by the law of the new State of habitual residence (B):**

- exercise of the supervision by the public authority on the parents' care,
  - request for authorization submitted by the guardian of the child to sell a child's property.
- In case of differences in the conditions of application between State A and State B: State B (of new HR) can take a new measure

33

## Case (1) - Variation (2)

After a year since the **decision of the Tribunal of Milan (issued on 15 June 2017)**, the **mother relocated to Austria** with the child upon the father's consent. The mother and the child started to build their new life there.

After some months, for business reasons the father could no longer travel each week to and from Austria, and thus was not able to effectively exercise his rights of access.

**On 14 September 2018 the father seised the local court in Austria**, asking for a **modification of his rights of access** as regulated in the decision issued by the Tribunal of Milan (three days every other week, instead of Saturdays and Sundays).

34

## Case (1) - Variation (2)

### Question

**Which article is applicable to the modification of the access rights of the father?**

35

## Case (1) - Variation (2)

### Answer

- We must refer to **Art. 15(3)** of the 1996 HC to determine the law applicable to the **conditions of application of the measure of protection** (rights of access) already taken under the Italian law (law of the State of the former HR of the child). Thus, the Austrian judge shall apply **Austrian law** (law of the State of new HR of the child).

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## After determined the applicable law...

The substantive law regulates the case in practice.

Before taking the decision, judges may entrust the **social service staff** with tasks on

- Hearing
- Report on family situation
- Report on family relationship
- How does it work in your jurisdiction?
  - In **Italy** there are **good practices** on cooperation among judges/lawyers/social service workers.
  - BUT what about in transnational cases? With other countries?

37

## Other 1996 HC provisions on the applicable law

The competent authority

### Art. 15

Attribution/extinction/  
exercise/modification/  
termination of parental  
responsibility (also under  
**Art. 18**)

The parties

### Art. 16

Attribution/extinction

### Art. 17

exercise

### Art. 18

modification/termination

38

## Example (1)

An **unmarried couple** living in Contracting State A separate before the birth of their child. The father moves to Contracting State B for his work. Under the law of Contracting State B, an unmarried father **does not automatically** acquire parental responsibility for a child upon the birth of the child. In contrast, under the law of Contracting State A, an unmarried father **does acquire** parental responsibility **automatically** upon the birth of the child.

39

## Example (1)

### Question

Does the father have the parental responsibility over the child?

- Yes
- No

40

### **Art. 16 of the 1996 HC**

(1) The attribution or extinction of parental responsibility **by operation of law**, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility **by an agreement or a unilateral act**, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

41

### **Art. 16(1): attribution/extinction of parental responsibility by operation of law**

- governed by the **law of the State of the child's habitual residence**
- requirement: **no intervention** of a judicial or administrative authority

42

**Art. 16(2): attribution/extinction of parental responsibility by agreement/unilateral act**

- governed by the **law of the State of the child's habitual residence** at the time when the agreement or unilateral act takes effect, even if it is the law of a non-Contracting State
- requirement: **no intervention** of a judicial or administrative authority

43

In a nutshell

**Art. 16: on the existence of parental responsibility** (without the intervention of a judicial or administrative authority)

- 1) attribution/extinction of parental responsibility **by operation of law**
- 2) attribution/extinction of parental responsibility **by agreement/unilateral act**

44

### Example (1)

#### Answer

- When the child is born, the question as to whether the father has parental responsibility for the child is **governed by the law of the State of the habitual residence of the child**, in this case, the law of Contracting State A. The father therefore **automatically** acquires parental responsibility for the child in accordance with this law (**Art. 16(1)**).

45

### Example (2)

A child is born in Contracting State A where **both unmarried parents** have parental responsibility for the child **by operation of law**.

The mother moves with the child to **Contracting State B** where the law provides that an unmarried father can only acquire parental responsibility **by court order**.

**Question: does the unmarried father have the parental responsibility after moving in State B?**

46

### **Art. 16(3): change of habitual residence**

- **parental responsibility** that exists under the law of the State of the child's habitual residence **subsists after a change** of that habitual residence
- underlying principle: **continuity** in the parent-child relationship

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### **Example (2)**

#### **Answer**

The parental responsibility of the father acquired in Contracting State A by operation of law **will subsist** after the move (> principle of continuity).

48

### Example (3)

A child is born in Contracting State A. The child's parents divorce shortly after her birth. Under the law of Contracting State A, both parents retain parental responsibility for the child after the divorce. Two years later the mother re-marries and the new couple and the child move to Contracting State B. **Contracting State B** has a rule whereby a **step-parent has parental responsibility** for his or her step-children by operation of law.

**Question: who has parental responsibility rights over the child?**

49

### Art. 16(4): change of habitual residence

- the **attribution** of parental responsibility **by operation of law** to a person who **does not** already have such responsibility is governed by the **law of the State of the new habitual residence**
- underlying principle: **mutability**, in order to ensure the exercise of parental responsibility over a child in the new State

50

### Example (3)

#### Answer

In this case, after the child acquires his or her habitual residence in Contracting State B, there will be **three persons** who have parental responsibility for her: her mother, father and step-father.

51

### Example (4)

In Contracting State A a holder of parental responsibility needs the consent of all other holders of parental responsibility before he or she can arrange a **non urgent surgical procedure** for the child.

The child lived with the parents in State B, where no **consent** is needed in similar situations, before moving to State A where they are living since one year and half.

**Question: does the mother need the consent of the holders of parental responsibility?**

52

### **Art. 17 of the 1996 HC**

The **exercise** of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

53

### **Art. 17: exercise of parental responsibility**

- governed by the **law of the State of the child's habitual residence, even in case of its change**
- underlying principle: **mutability**, with the consequence that the holder of parental responsibility under the law of the State of former habitual residence retains such right, but he/she shall exercise it under the conditions provided by the law of the State of the new habitual residence

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## Example (4)

### Answer

- If the child is now habitually resident in Contracting State A, such **consent is necessary** even if the child was previously habitually resident in Contracting State B where the parental responsibility in respect of the child was originally attributed and where there was no such requirement (Art. 17).

55

### In a nutshell

- **Art. 16: attribution/extinction of parental responsibility**  
(without the intervention of a judicial or administrative authority)  
Change of habitual residence: continuity/mutability
- **Art. 17: exercise of parental responsibility**  
(without the intervention of a judicial or administrative authority)  
Change of habitual residence: mutability  
= the law of the new State applies to the exercise of parental responsibility (e.g. consent of the other parent; conditions (periods) of the exercise of access rights)

56

## Case (2)

An **Austrian woman** and an **Italian man** got married in Italy in 2010, and since then, have been habitually residing in **Milan (Italy)**.

They had a **child** (Austrian and Italian national), born in Italy in 2011 and habitually resident with them. According to the Italian law, both parents hold parental responsibility over the child from his/her birth and they exercise it jointly taking into account his/her capabilities, attitudes and desires (cp. Article 316 of the Italian Civil Code).

57

Since **January 2017**, the father has been regularly travelling to **China** for business reasons, spending also several consecutive weeks abroad. The relationship between the father and the child progressively loosened, and as of September 2017 the father left the family home and had no more contacts with his family in Italy.

On **3 September 2018** the mother lodged an **application** before the Tribunal of Milan, seeking **revocation of the father's parental responsibility**. The father failed to enter an appearance before the court.

58

## Case (2) Questions

- Can the judicial authority terminate the parental responsibility of the father attributed by operation of law?
- Which Article is applicable?

59

### Art. 18 of the 1996 HC

The parental responsibility referred to in Article 16 may be **terminated**, or the conditions of its exercise **modified**, by measures taken under this Convention.

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### **Art. 18: termination of PR and modification of condition of the exercise of PR**

- This Art. refers to the **PR rights conferred by operation of law or by agreement/unilateral act** without authority (Art. 16),
- The PR rights may be **terminated or modified by measures taken under this Convention**, that means under Art. 15 = in application of the *lex fori* by the judicial (or administrative) authority (which has jurisdiction under the Convention/ie. Regulation).

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### **Case (2)**

#### **Answer**

- According to **Art. 18** of the 1996 HC, the parental responsibility attributed by operation of law may be terminated by measures taken under the Convention.
- The fact that the PR was attributed by operation of law does not prevent the judicial authority from taking the necessary measures of protection to terminate PR.

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## **Other provisions and issues**

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### **Article 19 of the 1996 HC**

(1) The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

(2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

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### **Art. 19: protection of third parties**

- the validity of a **transaction** entered into **between a third party and another person** who would be entitled to act as the **child's legal representative** under the law of the State where the transaction was concluded **cannot be contested**, and the third party cannot be held liable, on the **sole ground** that the other person was **not entitled to act** as the child's legal representative under the law designated by the provisions of the Convention

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### **Article 20 of the 1996 HC**

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

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## Art. 20: universal character

- the rules concerning applicable law are of **universal application**, meaning that the designated law may even be the law of a **non-Contracting State**
- **only** when parental responsibility is attributed or extinguished **without a judicial or administrative authority being involved** (i.e. Art. 16), as the principle of coincidence between *forum* and *ius* would otherwise be compromised

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## Article 21 of the 1996 HC

- (1) In this Chapter the term "law" means the law in force in a State other than its choice of law rules.
- (2) However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

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## **Art. 21: renvoi**

- **general rule:** *renvoi* is **excluded**
- **exception:** if the applicable law according to Art. 16 is that of a non-Contracting State, which designates the law of another non-Contracting State that would apply its own law, the law of the latter State applies

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## **Article 22 of the 1996 HC**

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

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## **Art. 22: public policy**

- the application of the law designated by the Convention can be **refused only** if it is **manifestly contrary to public policy**, 'taking into account the **best interests of the child**'

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### **In Italian case law:**

Certain domestic law provisions are qualified as **overriding mandatory rules** and applied by Italian courts also over the law designated by the conflict-of-laws provisions of the 1996 HC:

- **Art. 36-bis of the Italian PIL Act: substantive provisions** concerning the attribution of parental responsibility to both parents, the parents' duty to provide for child maintenance and the powers conferred to the judicial authority to restrict or terminate the exercise of parental responsibility in order to protect the child are to be **applied 'in any case'**

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- This case law can be considered a **breach of international law (and EU law)** performed by the State insofar as the domestic mandatory rule overrides the 1996 HC provisions governing the applicable law
- safer approach: to apply the **Convention provisions, unless the foreign law results to be manifestly contrary to public policy** in light of the principles underlying the (inapplicable) domestic overriding mandatory rule.

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## Recognition and enforcement of decisions in parental responsibilities matters

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## Contents

- Recognition and enforceability
  - Interplay of legal sources
  - Brussels II bis Regulation: (Non) exequatur; Procedure and documents; possibility to challenge.
- Enforcement
- Role of Central Authorities

## Interaction of legal sources

- EU Regulation 2201/2003 (Brussels 2bis)
- 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
- Multilateral and bilateral treaties
- National law

## Brussels 2bis Recognition and enforcement of parental responsibilities

- Principle of mutual trust
  - No review of jurisdiction
  - No review of substance
- *De minimis* rule regarding grounds for non-recognition
- Enforceability of an instrument in the Member State of origin = “judgment” for the purpose of the application of the rules on recognition and enforcement.
- The certificate issued to facilitate enforcement of the judgment should not be subject to appeal, but can only be rectified where it does not correctly reflect the judgment.
- Cooperation of Central authorities both in general matter and in specific cases

## Principle of mutual trust (Non) Exequatur

Art. 21 Automatic recognition of judgments

Enforceability of judgments

- on the **exercise of parental responsibility** in respect of a child - upon declaration as enforceable
- On the **right of access** to a child – upon presentation of a certificate issued by the judge in the Member State of origin

## Judgments on exercise of parental responsibility - Exequatur



- Jurisdiction
- Address for service within the area of the court
- National procedure rules

### **Grounds for non-recognition of a judgement (Art. 23)**

- The child was not heard (except for cases of urgency), and it violates fundamental principles of procedure in the EU Member State of enforcement;
- Any person having parental responsibility was not heard (and such person claims his or her rights);
- Given in default of appearance of the respondent, him/her being unaware of initiation of proceedings and not being able to arrange for the defence, unless the respondent has accepted the judgment unequivocally;

### **Grounds for non-recognition of a judgement (Art. 23) (continues)**

- manifestly contrary to the public policy of the EU State of enforcement (and against best interest of the child);
- irreconcilable with a later judgment given in the Member State of enforcement or another EU/non-EU State of the habitual residence of the child provided that such judgment qualifies for recognition in the Member State of enforcement
- the procedure of consultation between CA is not followed before placement of a child in another MS (Art. 56)

## **Appeal (Art. 33-34)**

- Number of appeals varies in EU Member States
- Appeal period is 1 or 2 months as of service of notice on enforceability of the judgement.
- Mandatory presence at the hearing.

## **Rights of access - Non exequatur (Art. 41)**

- Certificate concerning rights of access issued by the judge in the MS of origin (issued *ex officio* in cross-border cases)
- No declaration of enforceability
- No possibility to oppose recognition or issuance of the certificate

## **Enforcement (Art. 41, 45, 47-48)**

- Documents to be delivered:
  - 1) Certificate
  - 2) Copy of the judgement
  - 3) Translation of the certificate point 12 (relating to the arrangements for exercising right of access)
- Procedural rules of the state of enforcement apply
- Practical arrangements by a court in the MS of enforcement

## **Central Authorities and Legal Aid**

Art. 55 (b): provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child.

Art. 55(e): facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.

Art. 57: legal aid in enforcement of the judgements regarding parental responsibilities.

NB: arrangements made by/through central Authorities do not deny or change rules regarding recognition and enforcement of court judgements (CJEU case [HSE for Ireland v SC](#) (C-92/12 PPU) (26th April 2012))

**Thank you!**  
**Any questions or comments?**



**Otherwise...**





## **CASE STUDIES**

## Case Study No. 1

### MAIN TOPIC

Parental responsibility

### FACTS

Anita and Luc are former cohabitants. Anita is from Hungary and worked for EU, Luc is from France. They met in Brussels, lived together there and their common child Julie was born in Brussels. When the child was one month old, they separated.

They have severe discussion on the two month old child's habitual residence. Anita would like to leave Brussels as she does not work there anymore and argues that she always maintained her Hungarian 'habitual residence'. She argues that she was not ever really integrated into Belgium as she does not like French language, spoke to her child always Hungarian and had a definite-time employment in Brussels. By the way, her mother and sister lived temporarily with her and the child in Brussels to help her in taking care of Julie. Julie heard a lot of Hungarian and was not integrated to anywhere in Belgium.

Luc would like to argue for Belgium as the habitual residence of the child. He could not meet too much with her child as he worked as a soldier and actually could meet her only once, when she was born. He lived in Brussels with Anita only six months long, before Julie was born. He does not want actually to settle in Belgium but would like the Belgian court to proceed in the issue of parental responsibilities.

### Related questions

Are Anita's arguments relevant?

If not, or not enough, what kind of arguments would be relevant, if any?

Is Julie's habitual residence in Belgium?

If yes/not, why?

### VARIATION No. 1

Anita leaves the family's common home to Portugal when the child is one month old and Luc does not have any parental responsibilities or he has but agrees to the move to Portugal.

#### Related questions

Can the child change her habitual residence lawfully?

Where has she (the child) her habitual residence when leaving the country of the family's common home with her mother?

If Luc recognizes suddenly that he cannot keep contact with Julie well after their move into Portugal, which country has jurisdiction on contact?

### VARIATION No. 2

In the first case Julie is not an infant but four years old. The parents lived separately since the child was one month old. Luc kept contact with Julie, however worked as a soldier and met her relatively rarely.

#### Related questions

Can Anita argue for having her and Julie's habitual residence in Hungary?

What are the arguments for it and contra the Hungarian habitual residence?

Is the opinion of Julie relevant?

### VARIATION No. 3

In this case Julie is 15 years old. The parents lived separately since the child was two years old. Julie kept contact with her father but spent all holidays in Hungary. She is eager to develop her Hungarian and come to Hungary for a longer time as a secondary school student.

#### Related questions

Can Anita argue for having her and Julie's habitual residence in Hungary?  
What are the arguments for it and contra the Hungarian habitual residence?  
Is the opinion of Julie relevant?

#### **VARIATION No. 4**

In this last case Julie is 15 years old. The parents lived separately since the child was one month old. Luc left the army and works as an officer in France. The child lives alternately one week with Anita in southern Belgium, one week with Peter in northern France. She attends the same school which is very close to the border.

#### **Related questions**

Where is Julie's habitual residence?

#### **VARIATION No. 5**

Anita and Luc were married and both of them have Hungarian nationality. Julie is four years old. Anita would like to divorce in Hungary as she has quite good friends working as attorneys there. She would like that the Hungarian court should decide about the parental responsibilities.

#### **Related questions**

Is it possible that the Hungarian court which has jurisdiction in divorce should decide also on parental responsibilities?

What are the requirements?

Are the requirements fulfilled?

#### **LEGAL INSTRUMENT(S) TO BE APPLIED**

Regulation No 2201/2003

## Case Study No. 2

### MAIN TOPIC

Law applicable to parental responsibility matters.

### FACTS

An Austrian woman and an Italian man got married in Italy in 2010, and since then, have been habitually residing in Milan (Italy).

They had a son (Austrian and Italian national), born in Italy in 2011 and habitually resident with them. According to the Italian law, both parents hold parental responsibility over the child from his/her birth and they exercise it jointly taking into account his/her capabilities, attitudes and desires (cp. Article 316 of the Italian Civil Code).

Their marriage started to break down.

On 15 September 2016, the wife filed for separation and custody of the child before the Tribunal of Milan. She further pleaded for the award of the family home in her favor.

The husband wants to enter an appearance before the court and asks for our legal assistance especially on how to address the custody issue.

### Related questions

1. Has the Tribunal of Milan jurisdiction over the parental responsibility claims?
2. Which legal instrument regulates the law applicable to these claims?
3. Which Article is applicable? Which is the substantive law applicable to the claims?

### LEGAL INSTRUMENT(S) TO BE APPLIED

1996 Hague Convention

### **VARIATION No. 1**

On 15 June 2017, the Tribunal of Milan issued its decision, declaring the separation and granting to both parents the joint custody of the child (which, under Italian law, is the ordinary custody regime following the parents' separation or divorce, while the sole custody should be granted only upon certain conditions). The child should be placed with the mother, who was also awarded the Milan family home where she was supposed to live with the child. Further, the father was granted the rights of access to the child to be exercised according to a specific schedule (on Saturdays and Sundays the child would be staying with the father).

After some months, the mother was planning to relocate to Austria with the child, and spent several holidays in Austria in her family home (together with the child) in order to arrange the practicalities (e.g. the home, the child's enrolment in school, healthcare). The relocation was supposed to take place as of September 2018, so the child could have started school in Austria.

The father objected to the relocation.

On 3 September 2018 the mother lodged an application before the Tribunal of Milan, seeking permission to relocate.

The father asks for our legal assistance to appear before the court, contest the mother's application and claim a modification of his rights of access (an additional weekday, besides Saturdays and Sundays).

### **Related questions**

4. Has the Tribunal of Milan jurisdiction over the application for the permission to relocate and the modification of the rights of access?
5. Which Article is applicable to the modification of the father's rights of access?

### **LEGAL INSTRUMENT(S) TO BE APPLIED**

1996 Hague Convention

## VARIATION No. 2

After a year since the decision of the Tribunal of Milan (issued on 15 June 2017), the mother relocated to Austria with the child upon the father's consent. The mother and the child started to build their new life there.

After some months, for business reasons the father could no longer travel each week to and from Austria, and thus was not able to effectively exercise his rights of access.

On 14 September 2018 the father seised the local court in Austria, asking for a modification of his rights of access as regulated in the decision issued by the Tribunal of Milan (three days every other week, instead of Saturdays and Sundays).

### Related questions

7. Has the Austrian court jurisdiction over the application for the modification of the rights of access?
8. Which Article is applicable to the modification of the access rights of the father? Which is the substantive law applicable to the claim?

## LEGAL INSTRUMENT(S) TO BE APPLIED

1996 Hague Convention

## Case Study No. 3

### MAIN TOPIC

Law applicable to parental responsibility matters.

### FACTS

An Austrian woman and an Italian man got married in Italy in 2010, and since then, have been habitually residing in Milan (Italy).

They had a child (Austrian and Italian national), born in Italy in 2011 and habitually resident with them. According to the Italian law, both parents hold parental responsibility over the child from his/her birth and they exercise it jointly taking into account his/her capabilities, attitudes and desires (cp. Article 316 of the Italian Civil Code).

Since January 2017, the father has been regularly travelling to China for business reasons, spending also several consecutive weeks abroad. The relationship between the father and the child progressively loosened, and as of September 2017 the father left the family home and had no more contacts with his family in Italy.

On 3 September 2018 the mother lodged an application before the Tribunal of Milan, seeking revocation of the father's parental responsibility.

The father failed to enter an appearance before the court.

### Related questions

1. Has the Tribunal of Milan jurisdiction over the application for the revocation of the parental responsibility?
2. Which legal instrument regulates the law applicable to the claim?
3. Can the judicial authority terminate the parental responsibility of the father attributed by operation of law?
4. Which Article is applicable?
5. Which is the substantive law applicable to the claim?

### LEGAL INSTRUMENT(S) TO BE APPLIED

1996 Hague Convention

## Case Study No. 4

### MAIN TOPIC

Recognition and Enforcement of decisions in parental responsibilities matters

### FACTS

Nora and Valentin, both nationals of Hungary, got married in 2008. Their family installed in Pécs, hometown of both. For few years they enjoyed happy couple life, and in 2010 their daughter Sofia was born. In 2012, family was happy to greet little baby boy Andris, Sofia's brother. Already at that time, Nora and Valentin have been going through a tough period in their relationship. In 2014, they got divorced by the court decision, which inter alia, stated that Nora would keep custody over both children, and Valentin would have the right to take children every other weekend, first four weeks of school summer leave, and have kids spending with him either Christmas or Easter holidays, switching each year. Valentin also undertook to pay monthly maintenance of 200 EUR for each child.

Valentin visited Sofia and Andris from time to time, but due to difficulties of employment, he did not pay alimony on a regular basis. In such circumstances, Nora had to take care of children and ensure their welfare solely, often working extra hours. In June 2016, Nora contacted Valentin (who by that time had already moved to London looking for better employment opportunities), informing about certain of her health issues and asked to take children to stay with him. She also unrolled Sofia from school and Andris from nursery.

By Christmas time, Nora asked for her kids to be returned, however Valentin refused, stating that Nora herself gave away children to him, however Nora denied that, and said that her intention was to ask Valentin to take care of Sofia and Andris only during her recovery period, and she never intended to pass on custody to Valentin. She also reminded of the court order still valid, stating her right of the custody over their children. Valentin did not agree, and eventually, stopped communicating with Nora.

Nora applied to Central Authority of Hungary asking for assistance in getting her children back.

### Related questions

1. Can Nora enforce in England the court decision confirming her custody rights? If yes, then what legal instrument is applicable? How would your answer change if Valentin moved with children Sofia and Andris not to the United Kingdom, but to Switzerland or Germany?
2. Which documents does Nora need and where she must submit them?

3. What will be the procedure for recognising and declaring as enforceable the Hungarian court decision?
4. How can Valentin defend against enforcement of the Hungarian court decision? What might be legal ground for such legal defence? Would it be able for Valentin to apply in England pleading for non-recognition or non-enforcement of the Hungarian court decision? Why?
5. If the appeal is possible, then to what court should Valentin appeal? What is the number of appeal proceedings possible?
6. How can Central Authorities be helpful in this case?

<b>LEGAL INSTRUMENT(S) TO BE APPLIED</b>
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Regulation No 2201/2003 (Brussels IIa)

National Law

## Case Study No. 5

### MAIN TOPIC

Recognition and Enforcement of decisions in parental responsibilities matters

### FACTS

Adrian and Daniela, both Bulgarian nationals, met in 2007 in Germany, where they both had left for working. Their romance developed quickly, Daniela got pregnant, and they came back to Bulgaria in the end of 2008. They got married in Bulgaria, and couple months after their daughter Isabella was born. Soon all together went back to Germany, where they continued to live as a family until their final break up in 2014. Adrian went back to Bulgaria where he initiated divorce proceedings, eventually resulting in court decision, delivered in 2016, declaring divorce of Adrian and Daniela and granting full custody rights over Isabella to her father, Adrian.

### Related questions

1. Can Adrian enforce in Germany the court decision confirming his custody rights? If yes, then what legal instrument is applicable?
2. Which documents does Adrian need and where he must submit them?
3. What will be the procedure for recognising and declaring as enforceable the Bulgarian court decision?
4. How can Daniela defend against enforcement of the Bulgarian court decision? What might be legal ground for such legal defence?
5. If the appeal is possible, then to what court could any party appeal? What is the number of appeal proceedings possible?
6. How can Central Authorities be helpful in this case?

### LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2201/2003 (Brussels IIa)

National Law

### Variation No. 1

Suppose that initially in divorce proceedings, Adrian requested contact rights, obliging Daniela to travel to Bulgaria twice a year to hand over Isabella to her father. Daniela was represented in the case by a Bulgarian lawyer. Divorce proceedings developed quite quickly. As spouses did not have any property to divide, the court took only one hearing, at which Adrian changed his mind and instead of contact right requested for full custody over Isabella. The court granted such full custody right to Adrian.

### Related questions

1. How can Daniela defend against enforcement of the Bulgarian court decision? What might be legal ground for such legal defence?

### Variation No. 2

Suppose that divorce proceedings terminated by Adrian and Daniela making divorce settlement, leaving full custody of Isabella with her mother, Daniela, and Adrian having the right of contact: videocalls with Isabella at least twice a week, on Wednesday, and Saturday (or other weekdays, if the calls did not take place at prescribed time), spend with Isabella one week of her school leave of each Autumn and Spring vacations, and first three weeks of her summer school leave, and to take his daughter for Christmas in 2017 and then every other year. The settlement obliged Daniela to ensure conformity with this schedule, by making Isabella available for all contacts with her father, as prescribed, and stated that in case of violation of father's right to contact with the child, the mother would pay 100 EUR fine for each fact of violation, plus 50 EUR fine for each day of delay to allow for Adrian's and Isabella's contact.

For the first half a year all went smoothly, Isabella and Adrian regularly spoke on Skype, often on other weekdays than as prescribed by court settlement, and Adrian and Isabella spent one week of Spring holidays together. When summer came, Adrian got his three weeks with Isabella two weeks later than had been scheduled in the court settlement. However his patience ran out when Daniela refused that Adrian takes Isabella for Christmas in 2017. Adrian decided he needed to enforce the court settlement.

### Related questions

1. Can Adrian enforce in Germany the court decision confirming his visiting rights? Could Daniela defend against enforcement of the Bulgarian court decision? If yes, on what grounds?
2. Which legal instrument will apply to recognition and enforcement of the penalty provisions for non-conforming with Daniela's obligation to ensure for Adrian contact with his daughter?

### Variation No. 3

Suppose that the dispute regarding access rights to Isabella was between Daniela and Adrian's parents, grandparents to Isabella, and the court judgement establishes grandparents' visiting rights.

### Related question

1. What are the legal instruments applicable to recognition and enforcement of court judgement in such case?



## **LEGAL TERMINOLOGY**

(other language versions are available at this link  
[www.univr.it/class4eu/index.php/materials](http://www.univr.it/class4eu/index.php/materials))

## Glossary of legal terminology

<b>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</b>	
<b>Matrimonial matters</b>	divorce, legal separation or marriage annulment
<b>Parental responsibility matters</b>	the attribution, exercise, delegation, restriction or termination of parental responsibility
<b>court</b>	all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation
<b>judge</b>	the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation
<b>Member State</b>	all Member States with the exception of Denmark
<b>judgment</b>	a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision
<b>Member State of origin</b>	the Member State where the judgment to be enforced was issued
<b>Member State of enforcement</b>	the Member State where enforcement of the judgment is sought
<b>parental responsibility</b>	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. The term shall include rights of custody and rights of access
<b>holder of parental responsibility</b>	any person having parental responsibility over a child
<b>rights of custody</b>	rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence
<b>rights of access</b>	the right to take a child to a place other than his or her habitual residence for a limited period of time
<b>wrongful removal or retention</b>	a child's removal or retention where:

	<p>(a) it is in breach of rights of custody acquired by judgment 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; and</p> <p>(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall 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.</p>
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<b>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</b>	
<b>maintenance obligations</b>	maintenance obligations arising from a family relationship, parentage, marriage or affinity
<b>decision</b>	a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term 'decision' shall also mean a decision in matters relating to maintenance obligations given in a third State
<b>court settlement</b>	a settlement in matters relating to maintenance obligations which has been approved by a court or concluded before a court in the course of proceedings
<b>authentic instrument</b>	<p>(a) a document in matters relating to maintenance obligations which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:</p> <p>(i) relates to the signature and the content of the instrument, and</p> <p>(ii) has been established by a public authority or other authority empowered for that purpose; or,</p> <p>(b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them</p>
<b>Member State of origin</b>	the Member State in which, as the case may be, the decision has been given, the court settlement has been approved or concluded, or the authentic instrument has been established
<b>Member State of enforcement</b>	the Member State in which the enforcement of the decision, the court settlement or the authentic instrument is sought

<b>requesting Member State</b>	the Member State whose Central Authority transmits an application pursuant to Chapter VII
<b>requested Member State</b>	the Member State whose Central Authority receives an application pursuant to Chapter VII
<b>2007 Hague Convention Contracting State</b>	a State which is a contracting party to The Hague Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) to the extent that the said Convention applies between the Community and that State
<b>court of origin</b>	the court which has given the decision to be enforced
<b>creditor</b>	any individual to whom maintenance is owed or is alleged to be owed
<b>debtor</b>	any individual who owes or who is alleged to owe maintenance
<b>court</b>	<p>Includes administrative authorities of the Member States with competence in matters relating to maintenance obligations provided that such authorities offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State where they are established:</p> <p>(i) may be made the subject of an appeal to or review by a judicial authority; and</p> <p>(ii) have a similar force and effect as a decision of a judicial authority on the same matter.</p> <p>These administrative authorities shall be listed in Annex X. That Annex shall be established and amended in accordance with the management procedure referred to in Article 73(2) at the request of the Member State in which the administrative authority concerned is established.</p>
<b>domicile</b>	For the purposes of Articles 3, 4 and 6, it replaces the concept of 'nationality' in those Member States which use this concept as a connecting factor in family matters. For the purposes of Article 6, parties which have their 'domicile' in different territorial units of the same Member State shall be deemed to have their common 'domicile' in that Member State.

**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**

<b>scope</b>	This Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation
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<b>participating Member State'</b>	a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Decision 2010/405/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU
<b>court</b>	all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of this Regulation

<p><b>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</b></p> <p><b>Council Regulation (EU) 2016/1104 of 24 June 2016 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</b></p>	
<b>matrimonial property regime</b>	a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution.
<b>matrimonial property agreement</b>	any agreement between spouses or future spouses by which they organise their matrimonial property regime.
<b>authentic instrument</b>	<p>a document in a matter of a matrimonial property regime which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which</p> <p>(i) relates to the signature and the content of the authentic instrument; and</p> <p>(ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.</p>
<b>registered partnership</b>	the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation.
<b>property consequences of a registered partnership</b>	the set of rules concerning the property relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution.
<b>partnership property agreement</b>	any agreement between partners or future partners by which they organise the property consequences of their registered partnership.

Hague Convention on the civil aspects of international child abduction of 25 October 1980	
<b>wrongful removal or retention</b>	<p>where</p> <p>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 removal or retention; and</p> <p>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.</p>
<b>rights of custody</b>	rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence
<b>rights of access</b>	the right to take a child for a limited period of time to a place other than the child's habitual residence

Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children of 19 October 1996	
<b>parental responsibility</b>	parental authority, or any analogous relationship of 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
<b>measures directed to the protection of the person or property of the child</b>	<p>a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;</p> <p>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 residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;</p> <p>c) guardianship, curatorship and analogous institutions;</p> <p>d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;</p> <p>e) the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution;</p> <p>f) the supervision by a public authority of the care of a child by any person having charge of the child;</p> <p>g) the administration, conservation or disposal of the child's property.</p>

<b>wrongful removal or retention</b>	<p>where:</p> <p>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 removal or retention; and</p> <p>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.</p>
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<b>Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and Hague Protocol on the Law Applicable to Maintenance Obligations of 23 November 2007</b>	
<b>creditor</b>	an individual to whom maintenance is owed or is alleged to be owed
<b>debtor</b>	an individual who owes or who is alleged to owe maintenance
<b>legal assistance</b>	the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings
<b>agreement in writing</b>	an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference
<b>maintenance arrangement</b>	an agreement in writing relating to the payment of maintenance which i) has been formally drawn up or registered as an authentic instrument by a competent authority; or ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority
<b>vulnerable person</b>	a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself

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