

Parental responsibility: general overview

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Overview of EU PIL acts on parental responsibility

jurisdiction	applicable law	recognition and enforcement
Brussels IIa Reg.	1996 Hague Convention	Brussels IIa Reg.

special issues	jurisdiction / recognition and enforcement
international child abduction	<ul style="list-style-type: none"> • Brussels IIa Reg. • 1980 Hague Convention

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

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**

International legal instruments

1980 Hague Convention (Child abduction)

- entered into force on 1 December 1983
- 100 Contracting States (**all EU MS**; most recently: Tunisia since 1.10.2017, Cuba 1.12.2018, Guyana 1.5.2019, Barbados 1.10.2019)
- interplay with **BIIa Reg.** with regard to child abduction (the Reg. **complements** the 1980 Hague Conv. **in intra-EU cases**)

1996 Hague Convention (Child protection)

- entered into force on 1 January 2002
- 49 Contracting States (**all EU MS**; most recently: Cuba since 1.12.2017, Honduras 1.8.2018, Fiji 1.4.2019, Paraguay 1.7.2019; 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.)

1. Practice on Child Protection:

A. Parental responsibility

- Art. 2
- 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**

What is custody ?

- **Art. 2(9):**

the term "rights of custody" shall include 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.

- parents living together: they usually hold custody over their children jointly.
- 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.

Who decides on the custody and visiting rights?

- **parents by mutual agreement.**
 - A mediator or lawyer can help them if they do not manage to reach an agreement
- **the court:** in case the **parents are unable** to reach an agreement
 - 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/sole 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 EU 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 (art. 8).

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

- Yes
 - Specific mechanism for the recognition and enforcement of decisions of the EU courts. This makes it **easier** for subjects 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 (art. 40 ff.).

Which EU rules apply?

- The rules settling cross-border matters between children and their parents are part of the **Brussels IIa Regulation (+ international conventions)**
- These rules apply equally to all children, whether they are born in wedlock or not.

1. Practice on Child Protection

B. *International 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 (who has custody rights over the child and effectively exercise those rights) or the court.

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 (art. 10).
- 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.

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** (art. 11, par. 3).
- 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 (art. 11, par. 5).

Can a court in the country where the child was abducted 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** (art. 11, par. 2)
- However, the return cannot be prevented if **adequate arrangements** have been made to **protect the child** (art. 11, par. 4)
- 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 (art. 11, par. 6 ff.)

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
- (art. 40 ff. and art. 11, par. 8)

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.

2. Brussels Ia Regulation General topics

1. Jurisdiction (art. 8 ff.)
2. Recognition and Enforcement (art. 20 ff.)
3. Cooperation between Central Authorities and the Court (art. 53 ff.)

3. Case law

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

3. 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**.

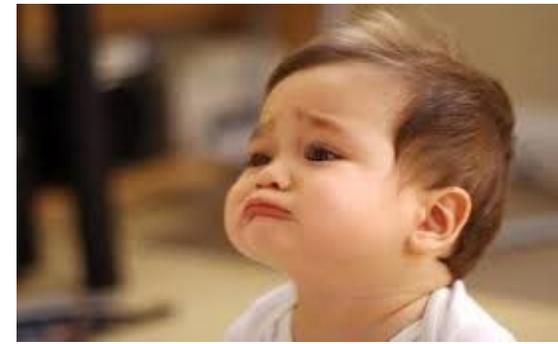
However, Hungarian judicial practice considers the refusal of the request for the return of the child as an exceptional decision and interprets it rather restrictively. Denial of the return of the child on the basis of Article 13 (b) happens relatively rarely, only in well-founded cases.



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.).

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.),

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 .**

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)

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)**

4. Conclusions

- Brussels Ila system on parental responsibility
 - Best interests of the child (jurisdiction, return)
 - Enforcement procedures
- From 1.08.2022: Brussels Ila Recast (Reg. 2019/1111 <https://eur-lex.europa.eu/eli/reg/2019/1111/oj>)

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
- 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
- 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>
- EUROPEAN CHILDREN AND THE DIVORCE OF THEIR PARENTS
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>
- Practice guide (European Commission)
<https://op.europa.eu/en/publication-detail/-/publication/f7d39509-3f10-4ae2-b993-53ac6b9f93ed>