

Parental responsibility Brussels II. bis

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Regulation Brussels II. bis

Art. 1.(b)
scope

The R. applies to all civil matters concerning attribution, exercise, delegation, restriction or termination of parental responsibility.

It includes: rights of custody
rights of access

Art.3. says when the R. shall not apply.

Meaning of parental responsibility

- is defined widely
- covers all rights and duties of a holder of parental responsibility

The age of the children covered by R.

- Convention of the Rights of the Child- up to the age of 18
- 1996 Hague Convention on Child Protection -up to the age of 18
- 1980 Hague Convention of Child Abduction - up to the age of 16

R. does not define a maximum age for the children who are covered by the R.

Definitions

Art. 2.

7. the term of parental responsibility
8. the term of holder of parental responsibility
9. the term of rights of custody (especially concerning the rights to determine the child's place of residence)
10. the term of right of access

General jurisdiction

Art.8.1. The court of MS shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that MS at the time that the court is contacted.

Habitual residence of the child-connecting factor

- is not defined by the R.-does not refer back to the national law
- should be interpreted in accordance with the objectives and purposes of R.
- defined country's territory
- judge has to examine all the circumstances of the case
- real center of child's life
- concerning the stay: duration, regularity, circumstances
- parents' workplace and conditions
- child's family and social relationships
- not a simple physical presence in the country

Habitual residence of the child

- Hungarian case
- C- 523/07
- C-497/10

Exeptions from the general rule

Art. 9.

- the child moves lawfully from one MS to another
- 3 months' period
- the holder of the access rights is in the territory of the child's former habitual residence
- there is a previous judgement on access rights

Limited possibility to choose a court

Art. 12 (1) When a divorce procedure is pending and the child does not have a habitual residence in that MS, the court has jurisdiction:

- 1., at least one of the spouses has parental responsibility in relation to the child
- 2., the spouses accept the jurisdiction of the divorce court
- 3., the jurisdiction of that court is in the best interest of the child

Problems!

Art. 12 (3)

- child has substantial connection with this MS
 - the parties accept the jurisdiction of that court
 - it serves the best interest of the child
- C- 656/13

Art. 13

Art 13 allows to decide on the issue of parental responsibility if the child is present in that MS and it is impossible to determine the habitual residence of the child.

Transfer

Art. 15.

- by way of exceptions
- if it serves the best interest of the child
- the child must have a special connection with the other MS
- one of the parties or the court, if at least one of the parties agrees, they can initiate the transfer

2 possibilities:

1., suspend the case and invite the parties to request a transfer before the court of the other MS within a short time period

2., directly request the court of the other MS to take over the case The court which has received the request for a transfer must decide within 6 weeks.

C-256/09

Provisional measure

Art.20

- in urgent cases
- in respect of persons and assets
- to protect the child's interests
- the court of another MS has jurisdiction in the case
- final decision will be made by the court which has jurisdiction

- C-403/09

Enforcement

A judgement on the exercise of parental responsibility enforceable in the EU country where it was issued and can be enforced in another EU country when it has been declared enforceable.

No declaration is required for:

- judgement granting rights of access
- judgements concerning the return of the child

Thank you for your attention

