

## **Workshop: Practical exercises on parental responsibility**

Facts:

Carolina is 5 years old, her parents are married. Her mother Anita has the Cuban and Spanish nationality, her father Marco is Spanish like Carolina herself. She was born in Spain and lived together with her parents in a small town called Rubio. In June 2014 her parents agreed, that she and her mother Anita would move to Berlin and that Carolina should be enrolled in a school in Berlin. Although Anita did not speak any German, she decided to finish her thesis at an university in Berlin. The parents agreed that this would be a good opportunity for their daughter to learn German, especially since Marco also speaks German. Carolina's parents also agreed for her and Anita to return to Spain after the end of the German school year 2014/2015 in July 2015. However, in February 2015 Anita decided that she wanted to divorce Marco and stay in Germany together with their daughter.

Marco and Anita initiated the following proceedings:

1. 15 February 2015: Anita applied before the Berlin court for an ex parte order to be granted the right to decide on the residence of the child. Marco was not informed; the German Court ruled within an interim order and provided Anita with the right of residency.
2. 20 March 2015: Marco filed a suit before the court in Rubio to grant him custodial rights over Carolina prior to divorce proceedings.

According to the Spanish procedural law, Marco could only ask the court for an interim order on custodial rights prior to a divorce.

3. 10 April 2015: Anita brought an action before the German court to grant her sole custody over Carolina as part of the main proceeding.

Marco argued that the German court has to stay its proceedings since the court of the child's residence in Spain was seized first.

The German court ordered to stay its proceedings until the jurisdiction of the Spanish court is established.

4. 15 July 2015: Marco and Anita agreed that the Carolina would spend the summer in Spain. Carolina was enrolled by Marco in her old school in Spain and is still living in Spain.

5. 20 February 2016: The Court in Rubio granted custody as an interim order. According to Spanish procedural law, the Court could only grant custody to Marco within an interim order.
6. March 2016: Marco filed for divorce in Spain and asked the Court in Rubio within these divorce proceedings to provide him with sole parental responsibility over Carolina.

Questions:

I. Discuss how the parties will argue in respect to the question whether the German Court has jurisdiction concerning Anita's application of 10 April 2015 to provide her with sole custody over Carolina.

II. On what legal basis will the German Court have to take its decision? What will the German Court have to take into account?