



According to Advocate General Rantos, the courts of a Member State have jurisdiction in a parental dispute in the case where a child, who was habitually resident in that Member State, is wrongfully removed to a non-Member State where he or she acquires habitual residence

The courts of the Member States retain this jurisdiction for an unlimited period of time

P is a British national and is three years old. Her parents, who have joint parental responsibility for her, are Indian nationals and have leave to remain in the United Kingdom. MCP, the child's mother, fled to India with the child in November 2017 and then returned temporarily to the United Kingdom, but since April 2019 the child has remained continuously in India. The mother returned to live in the United Kingdom but left the child with the child's maternal grandmother.

The father, who has remained in the United Kingdom, claims not to have seen the child since 2018 and would like her to live with him or, alternatively, to have contact with her. On 26 August 2020, the father brought an action before the High Court of Justice (England & Wales), Family Division, seeking, inter alia, the return of the child to the United Kingdom and rights of access.

The High Court of Justice (England and Wales) Family Division, considers that it is very likely that the mother's conduct amounts to wrongful removal of the child to India, or wrongful retention of the child there, but that, at the time when the father brought his action, the child was habitually resident in India. That court decided to refer the matter to the Court of Justice in order to ascertain whether, in the light of the Brussels IIa Regulation,¹ it has jurisdiction to rule on the application brought before it. It seeks to ascertain whether a Member State retains jurisdiction under that regulation for an unlimited period of time in the case where a child, who was habitually resident in that Member State, has been wrongfully removed to (or retained in) a non-Member State where, as a result of such removal (or retention), he or she subsequently became habitually resident.

In his Opinion delivered today, Advocate General Athanasios Rantos begins by stating that it is clear from the case-law of the Court that **the application of the Brussels IIa Regulation may concern legal relations involving non-Member States, notwithstanding the fact that the wording of that provision makes no mention of such States**. He then recalls that Article 10 of the Brussels IIa Regulation provides that, in the case of wrongful removal or retention of a child, the courts of the Member State in which the child was habitually resident immediately prior to the wrongful removal or retention retain jurisdiction until the child has acquired habitual residence in another Member State.

He goes on to state that, while the Brussels IIa Regulation mentions only Member States, it also governs legal relationships involving a non-Member State inasmuch as such relationships cannot result in jurisdiction being transferred to the courts of that non-Member State. It is irrelevant that the child acquires habitual residence in that non-Member State inasmuch as he or she does not acquire habitual residence in another Member State.

¹ Council Regulation (EC) N° 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Thus, according to the Advocate General, unlike the situation existing between two Member States, the courts of the Member State in which the child was habitually resident before his or her unlawful removal to a non-Member State continue to have jurisdiction for an unlimited period of time (*perpetuatio fori*). He also states that **if a child has been abducted to a non-Member State, the cooperation and mutual trust provided for by EU law cannot apply. Consequently, there is no justification for accepting the jurisdiction of the courts of that non-Member State, even in the case where the abducted child has acquired habitual residence in that latter State.**

The Advocate General recalls that, in general terms, the objective of the Brussels IIa Regulation is to ensure, in the best interests of the child, that the court which is nearest the child and, accordingly, has the best knowledge of his or her situation and state of development, takes the necessary decisions. However, he refers to the case-law according to which that regulation seeks to deter child abduction and that such abduction should not, in principle, have the consequence of transferring jurisdiction from the courts of the Member State in which the child was habitually resident immediately before the removal. However, the objective of deterring child abduction does not vanish solely because the removal is to a non-Member State. Consequently, the Advocate General **considers that an unlawful act, namely the abduction of a child by one of his or her parents, does not entail a change of the court having jurisdiction to rule on parental responsibility, with a view to protecting the best interests of that child.**

Furthermore, where a child who is a Union citizen is abducted to a non-Member State, to consider that the courts of that latter State have jurisdiction to rule on parental responsibility in respect of that child would be tantamount to severing all connection with EU law, even though that child is the victim of a wrongful removal or retention. The Advocate General considers that **such unlawful acts cannot deprive such a child of the genuine enjoyment of the right to have parental responsibility examined in his or her regard by a court of a Member State.**

The Advocate General therefore proposes that the Court should rule that **the courts of the Member State in which a child was habitually resident immediately prior to his or her wrongful removal or retention retain their jurisdiction to rule on parental responsibility in respect of that child, for an unlimited period of time, in the case where that child is abducted to a non-Member State, including where the child acquires his or her habitual residence in that non-Member State.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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