



Press and Information

Court of Justice of the European Union

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Judgment in Case C-603/20 PPU
SS v MCP

The jurisdiction of the court of a Member State that is seised of an action relating to parental responsibility cannot be based on Article 10 of the Brussels II bis Regulation in a case of abduction of a child to a third State

Where a finding is made that the child now has his or her habitual residence in a third State, the jurisdiction of the court will have to be determined in accordance with the applicable international conventions or, in their absence, in accordance with Article 14 of the Brussels II bis Regulation

SS and MCP are the father and mother of P, who was born in 2017 and has British citizenship. SS and MCP, who are of Indian nationality and have leave to remain in the United Kingdom, are not legally married but jointly hold parental responsibility. In October 2018 the mother went to India with the child, who has since lived there with her maternal grandmother and is therefore no longer habitually resident in the United Kingdom. For that reason, the mother challenges the jurisdiction of the courts of England & Wales, who must give a ruling on an application of the father, who is seeking the return of the child to the United Kingdom and rights of access in an action brought before the High Court of Justice (England & Wales), Family Division.

The referring court considers that it is necessary to determine whether it has jurisdiction on the basis of the Brussels II bis Regulation.¹ In that regard, that court states the following : at the time when it was seised by the father, the child was habitually resident in India and was fully integrated into an Indian social and family environment, her concrete factual connections with the United Kingdom being non-existent, apart from citizenship; further, the mother had at no time unequivocally accepted that the courts of England & Wales had jurisdiction to deal with issues of parental responsibility concerning P.

In addition, the High Court of Justice states that the Brussels II bis Regulation establishes the grounds of jurisdiction in cases of wrongful removal or retention of a child, while adding that it harbours doubts, in particular, as to whether Article 10 can apply to a conflict of jurisdiction between the courts of a Member State and the courts of a third State. The referring court therefore asks the Court of Justice whether the Brussels II bis Regulation must be interpreted as meaning that, if the finding is made that a child has acquired, at the time when the application relating to parental responsibility is brought, his or her habitual residence in a third State following abduction to that State, the courts of the Member State where the child was habitually resident immediately before his or her abduction, retain their jurisdiction indefinitely.

By its judgment today, the Court holds, **first**, that in relation to jurisdiction in a case of child abduction, Article 10 of the Brussels II bis Regulation provides for criteria that relate to a situation which is **confined to the territory of the Member States**. The Court holds that that provision does not refer to the possibility of residence being acquired in the territory of a Third State and **therefore does not apply to issues of conferral of jurisdiction in the case of child abductions to a Third State**.

¹ 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, repealing Regulation (EC) No 1347/2000 (OJ 2000 L 338, p. 1).

The Court states, **second**, that the EU legislature wanted to establish strict rules with respect to child abductions within the European Union, but that it did not intend those rules to apply to child abductions **to a third State**, since such abductions were to be covered by, inter alia, international conventions such as the 1996 Hague Convention on parental responsibility and child protection.² In certain circumstances (such as acquiescence or inaction on the part of a holder of rights of custody), that convention provides for the **transfer of jurisdiction to the courts of the State of the child's new habitual residence**: the Court notes in that regard that the transfer of jurisdiction would be deprived of effect if the courts of a Member State were to retain their jurisdiction indefinitely.

Third, the Court further states that retention of jurisdiction for an unlimited period would be incompatible with one of the **fundamental objectives** pursued by the Brussels II bis Regulation, namely **respecting the best interests of the child**, by giving priority for that purpose, to the criterion of proximity. The Court holds that when a child has been abducted to a third State, where that child has, following that abduction, acquired a habitual residence, the court of a Member State seised of an action concerning parental responsibility that finds that it cannot rely on the Brussels II bis Regulation as the basis for its jurisdiction, **will have to establish jurisdiction on the basis of bilateral or multilateral international conventions, or, in their absence, on the basis of the rules of its national law**. (Article 14 of the Brussels II bis Regulation)

The Court concludes that Article 10 of the Brussels II bis Regulation is **not applicable** to a situation where a finding is made that a child has acquired, **at the time when an application concerning parental responsibility is brought**, his or her habitual residence in a third State following abduction to that State.

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 judgment is published on the CURIA website on the day of delivery.

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² The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, signed at the Hague on 19 October 1996 (OJ 2008, L 151, p. 39).