



**For the purpose of identifying the law applicable to a maintenance payment, the habitual residence of its recipient is that of the place where the habitual centre of his or her life is located, particularly where it concerns a young child**

*The wrongful nature of the retention of that recipient on the territory of a Member State does not in principal preclude the transfer of his or her habitual residence to the territory of that State*

A. P. and W. J. are Polish nationals who were resident in the United Kingdom as of at least 2012. They gave birth to L. J. and J. J. in June 2015 and in May 2017 in the United Kingdom. Both children have Polish and British nationality. In 2017, A. P. went to Poland bringing her children with her. A. P. informed W. J. of her intention to remain on a permanent basis in Poland with the children, to which W. J. did not agree.

On 7 November 2018 **the children**, represented by A. P., **brought an application** against W. J. **before the Polish court for the payment of a monthly maintenance payment**. That court, whose jurisdiction was not disputed by W. J., ordered him to pay to each of his children a monthly maintenance payment pursuant to Polish law. W. J. brought an appeal against the judgment before the regional court of Poznań (Poland). Meantime the regional court of Poznań, by order of 24 Mai 2019, ordered A. P. to surrender the children to W. J. at the latest by 26 June 2019, finding that the children had been retained unlawfully in Poland and that their habitual residence was located in the United Kingdom immediately before that retention. A. P. did not however return the children to W. J. by the prescribed deadline.

Following that order, the regional court of Poznań, to which W. J. appealed the order to pay a monthly maintenance payment to his children, questions the **determination of the law applicable to the maintenance obligation at issue**. Pursuant to the Hague Protocol <sup>1</sup> it is the law of the State of **habitual residence** of the creditor which governs the maintenance obligations.

The regional court of Poznań therefore asks the Court whether a maintenance creditor who is a child may acquire, for the purposes of the determination of the law applicable to the maintenance claim, a new habitual residence in a State in which he or she was wrongfully retained where a court has ordered his or her return to the State where he or she habitually resided immediately prior to the wrongful retention.

During the procedure before the Court of Justice, the order of 24 May 2019 was annulled in part by the Supreme Court, Chamber of Extraordinary Review and Public Affairs (Poland).

By today's judgment the Court finds that, **for the purpose of determining the law applicable to the maintenance claim of a child who is a minor**, removed by one of his or her parents to the territory of a Member State, **the fact that a court of that Member State ordered in separate proceedings the return of that child to the State where he or she habitually resided with his or her parents before that child's removal is not sufficient to prevent that child from becoming habitually resident on the territory of that Member State**.

<sup>1</sup> Article 3 of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, approved on behalf of the European Community by Council Decision 2009/941/EC of 30 November 2009 (OJ 2009 L 331, p. 17).

The Court interprets the **concept of 'habitual residence'** of the maintenance creditor and determines **whether that creditor's wrongful detention on the territory of a Member State precludes** the transfer of his or her habitual residence to the territory of that State.

Concerning the concept of **'habitual residence'** of the maintenance creditor, the Hague Protocol does not define it. In that regard, the Court finds that the use of the adjective 'habitual' makes it possible to infer that residence must display a sufficient degree of stability, to the exclusion of a temporary or occasional presence. Next, it points out that the law of the habitual residence of the maintenance creditor appears in principle to be the law most closely connected with the creditor's situation, given the need to determine the existence and amount of the maintenance obligation by taking account of the conditions of law and fact of the social environment of the country where the creditor lives and carries out the major part of his or her activities.

It follows that **the habitual residence of the maintenance creditor is that of the place where on the facts his or her habitual centre of life is located, taking into account his or her family and social environment; that is all the more true where that creditor is a child of a young age** in view of the need to take due account of the best interests of that child which requires in particular that he or she is ensured sufficient resources, having regard to the family and social environment in which he or she lives.

The Court states that the task of establishing in a concrete situation whether the maintenance creditor resides habitually in one State or another **constitutes an assessment of fact, so that it is for the national court before which the matter has been referred to establish the place of habitual residence of the person concerned.** For the purpose of identifying the law applicable to the maintenance obligation sought in the present case, the time at which that court must take a decision to assess the place where that creditor is habitually resident is the time at which it is necessary to rule on the application for maintenance.

With regard to the **wrongful retention of the creditor on the territory of a Member State**, the Court finds that it runs counter to taking into account of the best interests of the child to consider that the existence of a judicial decision of a Member State finding the wrongful nature of the removal or retention of a minor child precludes as a matter of principle the conclusion that that child is habitually resident on the territory of that Member State. Further, the Court finds that in the absence of any legislation there is no reason warranting an interpretation of the Hague Protocol in the light or on the basis of the provisions of Article 10 of the Brussels II bis Regulation <sup>2</sup>, which neutralise the transfer in principle of jurisdiction in matters of parental responsibility to the Member State in which the child may have acquired his or her new habitual residence following his or her wrongful removal or retention in favour of the Member State where the child was habitually resident before that removal or retention.

It follows that, **for the purpose of identifying the applicable law, it is only in the context of an assessment of all the circumstances of the case before it that, while taking into due consideration the best interests of that child, the national court hearing the case may find it necessary to take into account the potentially wrongful nature of the removal or retention of that child.**

It will therefore be for that referring court to determine whether, in the light of all the existing circumstances characterising the situation of the children and having regard to their family and social environment, their presence in the Member State to which they were removed is of a lasting character.

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**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

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<sup>2</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

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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