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Judgment of the Court in Case C-572/21 | CC (Transfer of the child's habitual residence to a third country)

A court of a Member State does not retain jurisdiction to rule on the custody of a child on the basis of the 'Brussels IIa' Regulation ¹ where the habitual residence of the child has been lawfully transferred, during the proceedings, to the territory of a third State that is a party to the 1996 Hague Convention ²

CC gave birth to M in 2011, in Sweden. She was granted sole custody of her child from birth. Until October 2019, M always resided in Sweden. From October 2019 M began to attend a boarding school in Russia.

In December 2019, VO, M's father, brought an application before a Swedish District Court by which, primarily, he sought sole custody of M as well as a declaration that M's habitual residence was at VO's domicile, in Sweden. CC contended that that court had no jurisdiction on the ground that, since October 2019, M has been habitually resident in Russia. That court dismissed the plea of lack of jurisdiction raised by CC on the ground that, at the time the action was brought, M had not yet transferred his habitual residence to Russia. The Court of Appeal, Scania and Blekinge (Sweden) upheld the decision of the District Court that the Swedish courts have jurisdiction.

The Supreme Court (Sweden), hearing an action brought by CC seeking leave to appeal against the decision of the decision of the Court of Appeal, Scania and Blekinge, asks the Court of Justice whether the Brussels IIa Regulation must be interpreted as meaning that a court of a Member State that is hearing a dispute relating to parental responsibility retains jurisdiction to rule on that dispute under Article 8(1) of that regulation where the habitual residence of the child in question has been lawfully transferred, during the proceedings, to the territory of a third State that is a party to the 1996 Hague Convention.

In today's judgment, the Court finds that, under Article 8(1) of the Brussels IIa Regulation, jurisdiction in matters of parental responsibility is conferred on the courts of the Member State in which the child is habitually resident **at the time the court is seised**. Because of their geographical proximity, those courts are generally the best placed to assess the measures to be taken in the interests of the child. By referring to the time when the court of the Member State is seised, that article is an expression of the principle of *perpetuatio fori*, according to which that court does not

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 2003 L 338, p. 1).

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 ('the 1996 Hague Convention') has been ratified or acceded to by all the Member States of the European Union. The Russian Federation also acceded to that convention in 2012, and their accession took effect on 1 June 2013.

lose jurisdiction even if there is a change in the place of habitual residence of the child concerned during the proceedings. It follows that, in so far as, at the time when the court of the Member State is seised, the child in question has his or her habitual residence on the territory of that Member State, that court has jurisdiction in matters of parental responsibility, including where the dispute involves relations with a third State.

However, Article 61(a) of the Brussels IIa Regulation provides that, as concerns the relation with the 1996 Hague Convention, that regulation is to apply 'where the child concerned has his or her habitual residence on the territory of a Member State' **at the time when the court having jurisdiction gives its ruling**. Therefore, if that residence, at that time, is no longer established on the territory of a Member State, but on the territory of the third State that is a party to the 1996 Hague Convention, Article 8(1) of Regulation No 2201/2003 must not apply and the provisions of that convention must apply instead.

Thus, Article 8(1) of that regulation ceases to apply if the habitual residence of the child has been transferred to the territory of a third State which is a party to the 1996 Hague Convention before the competent court of a Member State, hearing a dispute relating to parental responsibility, has given its ruling.

The Court points out that the limitation set out in Article 61(a) of the Brussels IIa Regulation on the application of Article 8(1) of that regulation from the moment when the child no longer has his or her habitual residence on the territory of a Member State but on that of a third State that is a party to the 1996 Hague Convention is also consistent with the EU legislature's intention not to undermine the provisions of that convention.

The Court concludes that Article 8(1) of the Brussels IIa Regulation, read in conjunction with Article 61(a) thereof, must be interpreted as meaning that **a court of a Member State that is hearing a dispute relating to parental responsibility does not retain jurisdiction to rule on that dispute under Article 8(1) of that regulation where the habitual residence of the child in question has been lawfully transferred, during the proceedings, to the territory of a third State that is a party to the 1996 Hague Convention.**

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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