Anonymised version

Case C-61/24 [Lindenbaumer] [i]

Request for a preliminary ruling

Date lodged:

29 January 2024

Referring court:

Bundesgerichtshof (Germany)

Date of the decision to refer:

20 December 2023

Defendant and appellant in the appeal on a point of law:

DL

Applicant and respondent in the appeal on a point of law:

PQ

[…]

BUNDESGERICHTSHOF (FEDERAL COURT OF JUSTICE, GERMANY)

ORDER

[…]

of

20 December 2023

in the family matter of

DL […]

[i] The present case is designated by a fictitious name which does not correspond to the actual name of a party to the proceedings.

defendant and appellant in the appeal on a point of law,

[…]

v

PQ […]

applicant and respondent in the appeal on a point of law,

[…]

The Twelfth Civil Chamber of the Federal Court of Justice […] has made the following order:

I. The proceedings are stayed.

II. The following question concerning the interpretation of Article 8 of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation ('the Rome III Regulation') is referred to the Court of Justice of the European Union for a preliminary ruling:

Which criteria should be used to determine where the spouses are habitually resident within the meaning of Article 8(a) and (b) of the Rome III Regulation? In particular:

– does a posting as a diplomat affect or even preclude the assumption of habitual residence in the receiving State?

– must the physical presence of the spouses in a State be of a certain duration before it can be assumed that habitual residence had been established there?

– does the establishment of habitual residence require a certain degree of social and family integration in the State in question?

Grounds:

1 A. Facts

2 The proceedings concern the divorce of the applicant, born in 1965 ('the husband'), and the defendant, born in 1964 ('the wife').

3 The parties are German nationals and married in 1989. The couple have two children who are now adults.

4 In 2006, the parties rented an apartment in Berlin, where they lived together. In June 2017, they moved with almost their entire household to Sweden, where the

husband was employed at the German Embassy in Stockholm. The parties gave notice of their change of address from the German residence in June 2017. When the husband was transferred to the German Embassy in Moscow (Russia), the parties moved their household from Stockholm to an apartment on the embassy compound in Moscow in September 2019. The husband is an Embassy Counsellor and, unlike the wife, speaks Russian. The wife was also registered at the apartment on the compound as a relative of an embassy employee; she also registered her car in Russia. Both parties hold a diplomatic passport.

5 The parties kept their rented apartment in Berlin in order to be able to return there once the husband's employment abroad had ended. Since September 2019, the parties' adult daughter has been living in that rented apartment. From that date, the parties had also sublet parts of the apartment, with those rental agreements having ended at the end of May and the end of June 2020.

6 In January 2020, the wife travelled to Berlin to undergo an operation there; she had refused to undergo medical treatment in Moscow. She subsequently lived in the parties' rented apartment in Berlin and, at a later date, had her summer clothes sent from Moscow to Berlin. In August/September 2020, the husband also travelled to Berlin and also lived in the rented apartment for the duration of his stay. The parties met up with friends in Berlin. The husband spent Christmas 2020 and New Year 2020/2021 with the parties' son at his parents' home in Koblenz.

7 In February 2021, the wife returned to Moscow and lived in the apartment on the embassy compound. According to the husband, the parties informed their children on 17 March 2021 of their intention to divorce. During her stay, the wife moved all of the items she wanted to take with her to Berlin to a separate room in the Moscow apartment. She travelled to Berlin on 23 May 2021 and since then has lived in the parties' rented apartment there. The husband continues to live in the apartment on the embassy compound.

8 On 8 July 2021, the husband filed a divorce petition with the Amtsgericht (Local Court). He submitted that the parties had lived separately since January 2020, that the wife travelled to Moscow only for a short period in March 2021 and that the parties had then separated permanently.

9 The wife opposed the divorce petition on the grounds that the spouses did not separate until May 2021 at the earliest. As a result of her medical treatment, she stayed in Berlin from 15 January 2020 to 26 February 2021. An earlier return to Moscow was not possible due to her state of health and coronavirus restrictions. Until she left Moscow on 23 May 2021, she took care of the parties' household there. In addition, she brought her husband clothing as he had suffered a stroke and was in a Russian hospital or sanatorium.

10 By order of 26 January 2022, the Local Court dismissed the divorce petition since the year of separation (required under German law) had not yet expired and there were no grounds for a hardship divorce (Paragraph 1565(2) of the Bürgerliches

Gesetzbuch (Civil Code, 'the BGB')). In response to the husband's appeal, the Kammergericht (Higher Regional Court), in accordance with prior legal advice, ordered that the parties were divorced under Russian substantive law. In its reasoning, it stated that the law applicable to the divorce is governed by Article 8 of the Rome III Regulation because there is no choice of applicable law pursuant to Article 5 of the Rome III Regulation. In the present case, Article 8(b) of the Rome III Regulation and therefore Russian substantive law is applicable; renvoi is excluded under Article 11 of the Rome III Regulation. According to the parties' submissions, it must be assumed that the husband's habitual residence continues to be in Moscow, while the wife's habitual residence there did not end until she left for Germany on 23 May 2021, thus less than one year before the Local Court was seised on 8 July 2021.

11 The wife has brought an appeal on a point of law against that decision. That appeal is admissible and seeks a divorce under German substantive law and, together with the divorce decree, for the court to take a decision of its own motion on the apportionment of pension rights.

12 B. Law

13 I. Article 8 of the Rome III Regulation is worded as follows:

> 'In the absence of a choice pursuant to Article 5, divorce and legal separation shall be subject to the law of the State:
>
> (a) where the spouses are habitually resident at the time the court is seised; or, failing that
>
> (b) where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seised, in so far as one of the spouses still resides in that State at the time the court is seised; or, failing that
>
> (c) of which both spouses are nationals at the time the court is seised; or, failing that
>
> (d) where the court is seised.'

14 II. If the parties' divorce were subject to Russian substantive law, it would have to be pronounced under Article 23(1) of the Family Code of the Russian Federation of 29 December 1995 (reprinted in Bergmann/Ferid/Henrich, *International Ehe- und Kindschaftsrecht* [Date: 10 March 2021], country section: Russian Federation, p. 52) as a divorce by mutual consent without a finding of grounds for divorce since the wife has not requested that the husband's appeal be dismissed and therefore no longer opposes the divorce as such. In the event that Russian divorce law is applicable, an apportionment of pension rights, which is not recognised under Russian law, could be enforced only by virtue of the second sentence of

Article 17(4) of the of the Einführungsgesetz zum Bürgerlichen Gesetzbuche (Law introducing the Civil Code, 'the EGBGB'), which is worded as follows:

> 'Otherwise, the apportionment of pension rights shall be carried out pursuant to German law on application of a spouse, where one of the spouses has acquired, during the marriage, entitlement with a domestic pension provider, provided that the apportionment of pension rights is equitable, in particular in light of the economic circumstances of both parties during the entire period of the marriage.'

15 No application for the apportionment of pension rights under German law has been made in the present case and therefore the divorce should be pronounced under Russian law in isolation.

16 III. However, if German substantive law were to be applied to the divorce, the marriage of the parties would have to be dissolved pursuant to Paragraph 1565 of the BGB. The marriage has broken down because the spouses have not lived together for more than a year and it cannot be expected that the spouses will resume matrimonial cohabitation. In the event that German divorce law is applicable, an apportionment of pension rights would be enforceable under German law in accordance with the first sentence of Article 17(4) of the EGBGB, which reads as follows:

> 'The apportionment of pension rights is governed by the law applicable to the divorce under Regulation (EU) No 1259/2010; it shall be enforced only if German law is applicable under that legislation and such apportionment is recognised by the law of one of the States of which the spouses are nationals at the time when the petition for divorce is filed.'

17 If German divorce law were applicable, the apportionment of pension rights would have to be decided by the court of its own motion, thus without the need for an application by one of the spouses, as part of the divorce settlement pursuant to Paragraph 137(1) and (2) and the first sentence of Paragraph 142(1) of the Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on proceedings in family matters and in matters of non-contentious jurisdiction, 'the FamFG').

18 Paragraph 137 of the FamFG is worded as follows (excerpts):

> '(1) Divorce and ancillary proceedings are to be heard and decided on together (joinder).
>
> (2) Ancillary proceedings are
>
> 1. Proceedings concerning the apportionment of pension rights,
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> …

where a decision is required in the case of divorce and the family matter is filed by one of the spouses at the latest two weeks before the hearing at first instance in the divorce proceedings. No application is necessary for the apportionment of pension rights in the cases referred to in Paragraphs 6 to 19 and 28 of the [Gesetz über den Versorgungsausgleich (Law on the apportionment of pension rights, 'the Versorgungsausgleichsgesetz)].'

19 The first sentence of Paragraph 142(1) of the FamFG reads:

'In the case of divorce, all related family matters are to be decided by a single order.'

20 C. Reference to the Court of Justice of the European Union

21 [Comments on the obligation to make a reference for a preliminary ruling] […]

I.

22 The appeal on a point of law is permissible under Paragraph 70(1) of the FamFG and is also otherwise admissible; in particular, the wife has standing to bring proceedings.

23 [further argument] […]

24 […]

II.

25 The merits of the appeal on a point of law depend on whether the appeal court erred in law in finding that the parties' divorce is subject to Russian law under Article 8(b) of the Rome III Regulation.

26 [further argument] […]

27 […]

28 1. The appeal court's legal starting points are correct.

29 (a) The appeal court correctly held that the international jurisdiction of the German courts in the dispute arises from the third indent of Article 3(1)(a) of 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 ('the Brussels IIa Regulation') in conjunction with Article 100(2) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction ('the Brussels IIb Regulation'). [further argument] […]

30 (b) The appeal court was also right to hold that the law applicable to the divorce is governed by Article 8 of the Rome III Regulation because the parties were not in agreement as to the choice of applicable law under Article 5 of the Rome III Regulation before the end of the oral proceedings at first instance (see the first sentence of Article 46e(2) of the EGBGB in conjunction with Article 5(2) and (3) of the Rome III Regulation). [further argument] […]

31 2. In view of the cascade system in Article 8 of the Rome III Regulation, it is first necessary to determine whether the parties have established habitual residence in Russia, as the appeal court assumed. This could appear questionable not least because the husband was seconded to Russia as a diplomat and did not voluntarily register his residence at the compound of the German Embassy in Moscow, but was forced to do so due to official regulations, as the wife has submitted without challenge. The question therefore arises as to which criteria are to be used to determine where the spouses are habitually resident within the meaning of Article 8(a) and (b) of the Rome III Regulation, in particular whether the posting as a diplomat affects or even precludes the assumption of habitual residence in the receiving State. That question is relevant to the outcome of the dispute since the divorce would not be subject to Russian substantive law if the parties were unable to establish habitual residence in Russia.

32 (a) The fact that the parties moved to Moscow because of the husband's professional activity as a diplomat has no influence, in the appeal court's view, on the assessment that the parties had established their habitual residence there, in accordance with Article 8 of the Rome III Regulation. That residence was intended to be of an indefinite duration, as evidenced by the wife's submission that the parties had completely renovated their rented apartment in Berlin in 2021 in order to establish their residence there in old age.

33 (b) The question whether diplomats may, in principle, establish habitual residence in the receiving State has been answered in the negative in a decision by the Cour d'appel de Luxembourg (Court of Appeal, Luxembourg) (see judgment of 6 June 2007, 31642, The European Legal Forum 2007 11-145; German summary at www.unalex.eu [decision LU-26]), which, however, was delivered in relation to Article 2(1)(a) of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses ('the Brussels II Regulation').

34 The situation which formed the basis for that decision is comparable to that in the present case. The husband in that case was appointed as the Luxembourg ambassador to Greece and moved to Athens with his family a few years before the petition for divorce was filed. The Court of Appeal, Luxembourg, held that it could not be assumed that the husband had intended to establish the habitual centre of his interests in the receiving State. The duration of his residence in the receiving State depended exclusively on the duration of the performance of his diplomatic duties, the assignment of those duties being determined exclusively by

the government of the sending State. His residence in the receiving State was fortuitous, since the government could at any time assign him to a different post, which was limited in time, since such roles are generally limited to a few years, and uncertain, since the government could at any time assign him to a new position or role. In so far as the husband's professional, but also family and social life took place mainly in the receiving State, that was merely the consequence of being entrusted with the role of diplomat. There was no intention on the part of the diplomat to integrate in the receiving State. Such integration in the receiving State could also be regarded as incompatible with the diplomatic role which requires maintaining independence vis-à-vis the receiving State.

35 (c) The appeal on a point of law is based on the aforementioned decision and takes the view that the conditions for establishing habitual residence in the receiving State in respect of members of the diplomatic service are not fulfilled from the outset even in the context of Article 8 of the Rome III Regulation. Rather, the husband's professional status as a diplomat at the German Embassy in Moscow precludes the establishment of habitual residence in Russia. While it is true that the residence of the parties in Moscow was not planned for a specific duration (in the sense of a fixed term), the fact remains that it was, by its nature, temporary and was not intended to be permanent. The parties had wanted to return to Germany at the latest after the end of the husband's employment at the German Embassy in Moscow (or another foreign posting), as is clear from the fact that they had kept their rented apartment in Berlin, even if it had been partially sublet. When staying in Berlin, they could also continue to use the apartment. In addition, they did not freely choose to reside in Moscow, rather that residence was due to the fact that the husband, as a diplomatic agent, had been transferred to that country by his employer. Moreover, the parties were not able to rent an apartment in Moscow that they had freely chosen; on the contrary, they were obliged to take an apartment on the German Embassy compound for official reasons. Like other German diplomats, they had therefore lived in a geographically delimited area which, although it might not be considered extraterritorial in legal terms, in any case formed a kind of 'German enclave' from a professional, social and cultural point of view. That reduced the significance of the physical presence of the parties in Russia and prevented the establishment of social ties in that State. Even after they had taken up residence in Moscow, they maintained close ties to Germany. There were family ties with their adult daughter who has lived in the parties' rented apartment since September 2019.

36 In the appeal proceedings, the husband submitted that the spirit and purpose of the reference to habitual residence under Community law cannot be that diplomatic agents who, due to their official duties, enjoy immunity in the receiving State under Article 31(1) of the Vienna Convention on Diplomatic Relations of 18 April 1961 (BGBl. II 1964, p. 957, 977), would normally be subject to the (divorce) law of the new State of residence as a result of any transfer to a new place of employment.

37 (d) To date, that question has not been clarified in the case-law of the Court of Justice. It is true that the Court has interpreted Article 3(1)(a) of the Brussels IIa Regulation and Article 3(a) and (b) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ('the European Maintenance Regulation') as meaning that the status of the spouses concerned as members of the contract staff of the European Union, working in the latter's delegation to a third country and in respect of whom it is claimed that they enjoy diplomatic status in that third State, is not capable of constituting a decisive factor for the purposes of determining habitual residence, within the meaning of those provisions (see judgment of the Court of Justice of 1 August 2022, C-501/22, *FamRZ*, 2022, 1466, paragraph 58 et seq.). The present case concerns the Rome III Regulation, to which the case-law on the Brussels IIa Regulation and the European Maintenance Regulation cannot be readily transposed. In particular, the legal and factual conditions of the social environment in the State of residence are not relevant for the purposes of determining the relevant divorce law in the same way as for the assessment of the existence and the amount of a maintenance claim. Moreover, the abovementioned decision was not adopted in relation to diplomats, but to contract staff of the European Union who were not subject, at the headquarters in Brussels, to rotation and for whom it was not necessary to establish an intention to return to their State of origin. Furthermore, it is argued in the appeal on a point of law that the decisive question in the present case is not whether diplomatic status as such (and the resulting immunity) can preclude the establishment of habitual residence in the receiving State, but rather whether the nature and peculiarity of the activities of a diplomat employed at a diplomatic mission abroad preclude the assumption of habitual residence in the receiving State due to the circumstances of that role.

38 (e) In the Chamber's view, it is doubtful what influence the fact that the parties had to move to Moscow for an indefinite period because of the husband's professional activity as a diplomat has on the establishment of habitual residence there. In any event, in the context of the assessment, account could also be taken of the fact that the parties did not choose to move to Moscow of their own free will, rather that move was due to the husband's professional relocation. The same should apply to the fact that the (already limited) duration of his employment there is not substantially dependent on the husband's will. In addition, the parties were not free to choose their place of residence in Russia and they retained their apartment in Berlin in order to be able to return there once the husband's employment abroad had ended. If those circumstances were to be taken into account in the overall assessment, the question whether the parties could have established their habitual residence in Russia could be answered in the negative. In the absence of case-law of the Court of Justice on the matter, it is in any case not clear from the Chamber's point of view how the posting as a diplomat affects the definition of 'habitual residence' in accordance with Article 8(a) and (b) of the Rome III Regulation.

39 3. Furthermore, it is not established which criteria are to be used to determine where the spouses are habitually resident within the meaning of Article 8(a) and (b) of the Rome III Regulation. In particular, it must be clarified whether the physical presence of the spouses in a State must be of a certain duration before it can be assumed that habitual residence had been established there and whether the establishment of habitual residence requires a certain degree of social and family integration in the State in question. Those questions are relevant to the outcome of the dispute since Russian substantive law would apply to the parties' divorce only if the wife had (also) established her habitual residence in Russia and this had not ended more than one year before the Local Court was seised on 8 July 2021. The aforementioned questions would still be relevant to the judgment to be given even if it were considered – contrary to the opinion of the appeal court – that the wife had (re)established her habitual residence in Germany due to her physical presence in Berlin from January 2020 to February 2021. Even in that case, her return to Moscow in February 2021, when she still considered that there was a chance of continuing her marriage, could have immediately led to the (re)establishment of her habitual residence in Russia, if a minimum period of residence and social and family integration were not considered necessary in that regard.

40 (a) According to the case-law of the Court of Justice, the concept of 'habitual residence' must be interpreted autonomously, taking into account the wording and the context of the provisions referring to that concept and the objectives of the respective regulation (see judgments of the Court of Justice of 6 July 2023, C-462/22, *FamRZ*, 2023, 1479, paragraph 26; of 25 November 2021, C-289/20, *FamRZ*, 2022, 215, paragraph 39; and of 28 June 2018, C-512/17, *FamRZ*, 2018, 1426, paragraph 40, each case referring to the Brussels IIa Regulation). However, the Court has not yet ruled on the interpretation of that concept in the Rome III Regulation.

41 (b) The way in which habitual residence is to be understood in Article 8(a) and (b) of the Rome III Regulation is a matter of disagreement in German legal literature.

42 (aa) The first paragraph of recital 10 of the Rome III Regulation provides that the substantive scope and enacting terms of that regulation should be consistent with the Brussels IIa Regulation. The view is taken in some German legal literature – and by the appeal court – that the concept of 'habitual residence' in the Rome III Regulation must be understood in the same way as the same concept in the Brussels IIa Regulation (see Althammer/Mayer, *Rome III*, Article 5, paragraph 12; Althammer/Tolani, *Rome III*, Article 8, paragraph 6 et seq.; Jauernig/Budzikiewicz, *BGB*, 19th edition, Articles 5 to 16 of Regulation (EU) 1259/2010, paragraphs 9 and 2; *NK-BGB*/Gruber, 3rd edition, Article 3 of the Rome III Regulation, paragraph 15; Grüneberg/Thorn, *BGB*, 83rd edition, Article 5 of the Rome III Regulation, paragraph 3; Andrae, *Internationales Familienrecht*, 4th edition, § 3 paragraph 26 and § 2 paragraph 64; Hausmann, *Internationales und Europäisches Familienrecht*, 2nd edition, paragraphs A 370

and A 424; Winter, *Internationales Familienrecht bei Fällen mit Auslandsbezug*, paragraph 181; Gruber, *IPRax*, 2012, 381, 385).

43 Relying on the case-law of the Court of Justice with regard to Article 3(1)(a) of the Brussels IIa Regulation (see judgments of the Court of Justice of 1 August 2022, C-501/20, *FamRZ*, 2022, 1466, paragraph 44 and of 25 November 2021, C-289/20, *FamRZ*, 2022, 2015, paragraph 57 et seq.), the appeal court interpreted the concept of 'habitual residence' in Article 8(a) and (b) of the Rome III Regulation as being characterised, in principle, by two factors, namely, first, subjectively, the intention of the spouse to establish the habitual centre of his or her interests in a particular place (*animus manendi*) and, secondly, objectively, a presence which is sufficiently stable in that State. Before habitual residence can be transferred, it is of paramount importance that the person concerned has it in mind to establish in that State the permanent or habitual centre of his or her interests, with the intention that it should be of a lasting character. A minimum duration is not provided for, so that the duration of residence can at most serve as an indicator in the assessment of the permanence of the residence (see judgment of the Court of Justice of 22 December 2010, C-497/10 PPU, *FamRZ*, 2011, 617, paragraph 51). What has to date been the third element of social integration has however taken a back seat.

44 (bb) By contrast, other voices in German legal literature consider that there is no complete congruence in the interpretation of the concept of 'habitual residence' for the purposes of determining international jurisdiction under the Brussels IIa Regulation and the divorce law based on conflict-of-laws rules under the Rome III Regulation since the ratio of the two connecting factors is different. Rather, habitual residence under the Rome III Regulation may well be assessed differently in cross-border cases than under the Brussels IIa Regulation (*jurisPK-BGB*/Johanson, 10th edition, Article 8 of the Rome III Regulation, paragraph 5 and Article 5 of the Rome III Regulation, paragraph 13; *NK-BGB*/Lugani, 3rd edition, Article 8 of the Rome III Regulation, paragraph 10 and Article 5 of the Rome III Regulation, paragraph 47 et seq.; Rauscher/Helms, *EuZPR/EulPR*, 4th edition, Article 8 of the Rome III Regulation, paragraphs 19 and 26; Helms, *FamRZ*, 2011, p. 1765, 1769 et seq.). In particular, the Rome III Regulation requires a stronger connection with the State of residence than the Brussels IIa Regulation, where it is regularly envisaged that the applicant has the choice between alternative jurisdictions (*jurisPK-BGB*/Johanson 10th edition, Article 5 of the Rome III Regulation, paragraph 13). Therefore, even after a considerable period of time has passed, a decision as to whether the habitual residence of a married couple in accordance with Article 8(a) and (b) of the Rome III Regulation is already in another State can be made only after careful consideration of all the circumstances of the individual case (Rauscher/Helms, *EuZPR/EuIPR*, 4th edition, Article 8 of the Rome III Regulation, paragraph 19; Helms, *FamRZ*, 2011, p. 1765, 1770; see also Henrich, *Internationales Scheidungsrecht*, 5th edition, paragraph 86 et seq.).

45 (cc) According to recital 14 of the Rome III Regulation, in the absence of a choice of applicable law, the law with which the spouses have a close connection should apply even if it is not that of a participating Member State. In addition, it follows from recital 21 thereof that the Rome III Regulation should introduce harmonised conflict-of-law rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. Such connecting factors should be chosen so as to ensure that proceedings relating to divorce or legal separation are governed by a law with which the spouses have a close connection.

46 The reference in recitals 14 and 21 to a divorce law with which the spouses have a close connection could suggest that the concept of 'habitual residence' in Article 8(a) and (b) of the Rome III Regulation is to be interpreted differently from the Brussels IIa Regulation. This is because the spouses will generally not have a close connection to the legal system of another State as soon as they move there, even if their residence in that State is intended to be of an indefinite duration. The position may be different, for example, if this is their State of origin. However, when moving to a State that was previously foreign to the spouses – especially if the spouses continue to maintain close ties to their State of origin – residence could initially be only de facto as it becomes established as habitual residence only after a certain period of time has elapsed.

47 Whether a certain degree of social and family integration has already taken place in that State could also be relevant to the question of whether the spouses already have a close connection with the law of the State concerned. In any event, in order to determine habitual residence under the Brussels IIa Regulation, the Court of Justice has proceeded on the basis that habitual residence must be an expression of some degree of social and family integration of a person (judgments of the Court of Justice of 9 October 2014, C-376/14 PPU, *FamRZ*, 2015, 107, paragraph 51; of 22 December 2010, C-289/10 PPU, *FamRZ*, 2011, 617, paragraph 47; and of 2 April 2009, C-523/07, *FamRZ*, 2009, 843, paragraphs 38 and 44). That criterion could also be used to define the concept of 'habitual residence' in the Rome III Regulation (see also *NK-BGB*/Lugani, 3rd edition, Article 5 of the Rome III Regulation, paragraph 54; Rauscher/Helms, *EuZPR/EulPR*, 4th edition, Article 8 of the Rome III Regulation, paragraph 20), bearing in mind that, in view of the objectives of the Rome III Regulation, as expressed in recitals 14 and 21, a significantly greater degree of social and family integration than under the Brussels IIa Regulation may be required for a finding of habitual residence under the Rome III Regulation.

III.

48 [Comments on the obligation to make a reference for a preliminary ruling] […]

[…]

Lower courts:

Amtsgericht Tempelhof-Kreuzberg (Local Court, Tempelhof-Kreuzberg, Germany), decision of 26 January 2022 – 152 F 8176/21 –

Kammergericht Berlin (Higher Regional Court, Berlin, Germany), decision of 27 February 2023 – 3 UF 33/22 –

[…]