



Case law CJEU / ECtHR

Structure of presentation

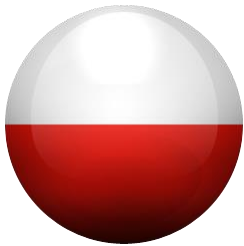
- Court of Justice of the European Union (CJEU)
 - *BM v. LO*, 6 July 2023 (C-462/22)
 - *Greiszel*, 20 June 2024 (C-35/23)
 - *Anikovi*, C-395/23, Lodged 29 June 2023 (from Bulgaria)
 - *Grečniaka*, C-361/24, Lodged 17 May 2024 (from Austria)
 - *Amozov*, C-67/24, Lodged 29 January 2024 (from Bulgaria)
- European Court of Human Rights (ECtHR)
 - *Vagdalt v. Hungary*, 7 March 2024, Appl. No. 9525/19
 - *Janočková v. Slovakia*, 8 February 2024, Appl. No. 39980/22
 - *Tzioumaka v. Greece*, 9 April 2024, Appl. No. 31022/20

I. CJEU case law

Facts



BM (German national) & LO (Polish national)
Married in Poland in 2000



- 27 October '13: BM filed divorce in Germany
- Claim was he had left home in June '12, and
 - Now settled in DE
 - LO claimed that BM still had habitual residence in PL

Articles 10 and 11, Brussels II-*bis* Regulation

1. Does the waiting period of one year or six months under the fifth and sixth intents of Article 3, Brussels II-*bis* begin to run only upon establishment of habitual residence or is it sufficient that the applicant has mere de facto residence for the necessary period?

Context of Article 3, Brussels II-*bis*

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State
 - a) in whose territory:
 - the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
 - the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question;

Reasoning of the court

- No distinction between residence and habitual residence
- Especially given the aims of the Regulation
- Balance to be drawn between
 - mobility of persons in the EU
 - Legal certainty
- Therefore article 3(1)(a)(6) Brussels II-*bis* Regulation only provides jurisdiction if the application:
 - Is a national of the MS
 - Has his/her habitual residence for at least six months prior to filing application

Facts



L born in Switzerland in November '14

L has German (father) and Polish (mother) nationality

L lived with her mother in Germany from until April '16

In April '16 the mother and L moved to Poland

From April '17, mother refused to allow father to visit L

May '17, mother told father that intended to stay in PL

Articles 10 and 11, Brussels II-*bis* Regulation

1. Does Article 10 apply, with the effect that the jurisdiction of the courts in the former MS of residence is retained, if the child had his or her habitual residence in an EU MS (Germany) before his or her removal and the return proceedings are commenced between an EU MS (Poland) and a third State (Switzerland) and in those proceedings the return was refused?
2. What are the conditions in the context of Article 10(b)(i)?
3. Does Article 11(6)-11(8) apply in the context of relations between a third state and a MS?

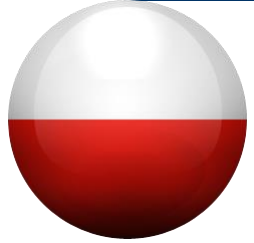
Context of Article 10, Brussels II-*bis*

Courts of MS retain jurisdiction in case of wrongful removal/retention, until:

(1) Child has acquired habitual residence in another MS, and

- a) Each person has acquiesced, or
- b) Child has resided for at least 1 yr and:
 - i. Within one year after the holder of rights of custody has had/should have had knowledge of whereabouts of the child, no request for return has been lodged before the competent authorities
 - ii. Etc.

Judicial Proceedings



7 July '17: Father filed for return to Switzerland through CA

8 December '17: Polish court of first instance denied return (Art. 13)

17 April '18: Appeal denied by Polish Court of Appeal

27 September '17: Mother filed divorce proceedings in PL

5 June '18: Mother granted custody and maintenance set

12 July '18: Main proceedings for sole custody in DE

3 June '19: Decision of DE court, dismissed father's application

Father appealed



Reasoning of the court

- Application of Article 10 Brussels *libis*
 - Proceedings for the return of the child having been commenced under HCAbC '80
 - Between two Member States
 - Return proceedings initiated through third state
- Question is whether the German court retain jurisdiction based on Article 10?

Concept of habitual residence

- Definition of habitual residence:
 - *A* 2 April 2009, C-523/07, ECLI:EU:C:2009:225
 - *Mecredi* 22 December 2010, C-497/10 PPU, ECLI:EU:C:2010:829
 - *C v. M* 9 October 2014, C-376/14 PPU, ECLI:EU:C:2014:2268
 - *W and V v. X* 15 February 2017, C-499/15, ECLI:EU:C:2017:118
 - *OL v. PQ* 8 June 2017, C-111/17 PPU, ECLI:EU:C:2017:436
 - *HR* 28 June 2018, C-512/17, ECLI:EU:C:2018:513
 - *UD v. XB* 17 October 2018, C-393/18 PPU, ECLI:EU:C:2018:835
 - *EE* 16 July 2020, C-80/19, ECLI:EU:C:2020:569
 - *IB v FA* 25 November 2021, C-289/20, ECLI:EU:C:2021:955
 - *WJ v. LJ and JJ* 12 May 2022, C-644/20, ECLI:EU:C:2022:371
 - *MPA v LCDNMT* 1 august 2022, C-501/20, ECLI:EU:C:2022:619

Application of Application 10, Brussels II-*bis*

- Application Article 10 Brussel *libis*
 - Nothing in wording of Article 10 that prevents application regarding third state
 - Wrongful removal according to Article 2(11) Brussel II-*bis*
 - Infringement
 - Rights of custody
 - Under law of the child's habitual residence immediately before removal
 - Article 10 refers to return proceedings
 - Return proceedings must be in another MS
 - But mothering to restrict that initiated from a third state
 - No obligation to rely on HCAbC '80
- Thus: Article 10(b)(i) Brussels II-*bis* does not cease in this case!
- German courts could still have jurisdiction on the basis of Article 10

Pending judgments

- *Anikovi*, C-395/23, Lodged 29 June 2023 (from Bulgaria)
 - Which regulation determines international jurisdiction in non-contentious proceedings concerning the granting of permission for disposal of immovable property of a child
 - Article 7(1) Brussels II-ter (No. 2019/1111) – habitual residence of the child
 - Article 24(1) Brussels I-bis (No. 1215/2012) – place where immovable property is located
- *Grečniaka*, C-361/24, Lodged 17 May 2024 (from Austria)
 - Reference to ‘same parties’ in the context of Article 12 Maintenance Regulation?
 - Proceedings A: child maintenance (commenced by the children)
 - Proceedings B: father files divorce and requests child maintenance be determined
 - Application of Article 14 in conjunction with Article 3?

Pending judgments

- *Amozov*, C-67/24, Lodged 29 January 2024 (from Bulgaria)
 - Universal application of Maintenance Regulation
 - Which nationalities referred to in Article 6 Maintenance Regulation?

II. ECtHR

Vagdalt v. Hungary, 7 March 2024, Appl. No. 9525/19

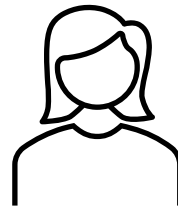
- Applicant's inability to have his paternity recognised.
- Alleged violation of Article 8 ECHR



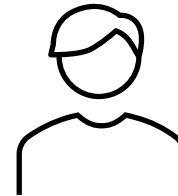
Applicant



ER



CH



Biological father



Judicial proceedings

- 4 November '11: Applicant filed with court for declaration of paternity
- 31 January '12: Request denied as child already had two parents
 - This decision was overturned on appeal
- 21 November '12: Guardian *ad litem* appointed
 - Guardian ad litem brought proceedings to deny CHs paternity
 - Denial of paternity issued
 - Upheld on appeal, but reversed in the course of judicial review
- 31 March '17: Guardian *ad litem* filed proceedings for denial paternity
- 14 February '18: Declared time-barred

Reasoning of the court

- Question is whether national authorities have struck fair balance
- Biological father could not commence proceedings
- Procedure was possible for guardian *ad litem*.
 - Earlier decision that this balance is not irreconcilable with Article 8
 - *Krisztián Barnabás Tóth v. Hungary*, 12 February 2013, No. 48494/06
 - *Kautzor v. Germany*, 22 March 2012, No. 23338/09
 - *Doktorov v. Bulgaria*, 5 April 2018, No. 15074/08
- Question is thus whether denial in this case was after fair balance

Reasoning of the court

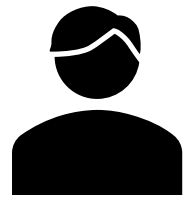
- DNA-test conducted, and applicant was the biological father (§ 58)
- Registration of this fact required consent of mother (§ 58)
- No method for the applicant to have fatherhood recognised (§ 59)
- The guardian *ad litem* is also subject to the responsibility of a State under the Convention! (§ 67)

- Given all the facts, violation of Article 8, ECHR

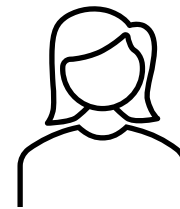
Janočková v. Slovakia, 8 February 2024, Appl. No. 39980/22

- Length and effectiveness of proceedings for urgent interim measure
- Alleged violation of Article 8 and 13 ECHR

Applicant 1



Applicant 2



Reasoning of the court

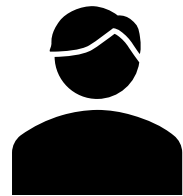
Ball v. Austria, 11 December 2012, No. 40628/10, § § 45-51

- Mutual enjoyment of parent-child relationship falls within Art. 8
- Primary objective to protect individual from arbitrary action by state
- Positive obligation to respect for family life
- State should take steps to reunite children with parents:
 - Cases of compulsory taking of children into care, and
 - Contact/residence disputes between parents
- However, obligation is not absolute
 - Contact may not be immediate, may require phasing
 - National authority needs to have exhausted all steps to facilitate
- Adequacy judged according to swiftness of its implementation
- Active participation of parents in proceedings is also necessary

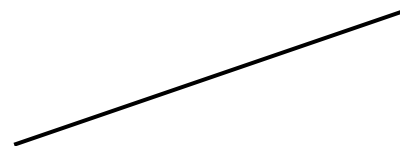
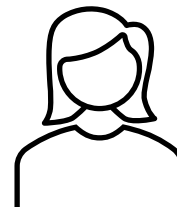
Tzioumaka V. Greece, 9 April 2024, Appl. No. 31022/20

- Effectiveness of enforcement of domestic decision
- Alleged violation of Article 8 ECHR

Applicant 1



Applicant 2



Facts

- Applicant and KK married in Greece in 2011
- Two daughters, E (2012) and G (2015)
- KK took the daughters away from the applicant
- Applicant commenced proceedings against KK
- Multiple court proceedings (civil and criminal)

Reasoning of the court

- General principles concerning State's role in protecting relationships
 - *Santos Nunes v. Portugal*, 22 May 2012, Appl. No. 61173/08
 - Relationship between parent/child is protected
 - Inability to maintain relationship calls for action by the State (see *Ball*)
 - In this case,
 - case filed in April 2016
 - Initial decision on 21 September 2018
 - Appeal decision in May 2020
 - ECtHR – this period is too long (§ 85) and leads to violation of Art. 8
 - In the event of refusal to co-operate, all measures, including sanctions should be available (*Maumousseau v. France*, 6 December 2007)