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New efforts in judicial cooperation in European child abduction cases

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1. The problem of child abduction

Child abduction cases concern the wrongful removal or retention of a child. In these cases a child is abducted illegally from one jurisdiction to another or is unlawfully retained in that latter jurisdiction. The abductor is frequently one of the child's parents. Child abduction is not rare within the European Union. It has been estimated that there are approximately 1,800 cases per year[1]. Child abduction in the EU is one of the most complicated legal issues in the European international civil procedure. Several procedural issues have to be solved: The consideration of a combination of several European and international legal sources is necessary (see 2). In the complicated field of family relations, where special procedural challenges are posed (3), questions of jurisdiction (4) arise. The conduct of court proceedings (5), the cooperation of national Central Authorities (6), and finally recognition and enforcement (7) give rise to additional difficulties.

On 1 August 2022, all EU Member States except for Denmark will apply the Brussels IIa Recast of 25 June 2019[2], which is a revision of Regulation (EC) 2201/2003[3]. The Regulation will be applied to cases of child abduction within the European Union and to the

[1] See in more detail, B. Ubertazzi, *The hearing of the child in the Brussels IIa Regulation and its Recast Proposal*, "Journal of Private International Law" 2017/14, p. 568.

[2] 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 (recast) (OJ L 178, p. 1), hereinafter called the Brussels II ter Regulation.

[3] 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 L 338, p. 1 as amended), hereinafter called the Brussels II bis Regulation.

enforcement of orders within the European Union. This development would seem to be a good occasion to ask what the bases for judicial cooperation in European child abduction cases are and how they work. The focus will be on the recent reform and the expected effectiveness of the new rules.

2. Combination of several legal bases

2.1. The 1980 Hague Convention and the Brussels IIa Recast

One of the peculiarities of the field is the combination of different legal sources. Rather than being governed solely at the European level, an international legal instrument must also be accounted for in resolving disputes. Specifically, the 1980 Hague Convention on International Child Abduction[4] with 101 Contracting States – one of the world's most accepted international conventions – has to be applied. The "Child Abduction Section" of the Hague Conference provides information about the operation of the Convention and aims to foster better coordination[5]. There is also the special legal database called INCADAT on international child abduction law, which allows judges and practitioners to follow the development of international case law[6].

The EU has its own competence in the field of international civil procedure and the power to adopt its own measures concerning family law (Art. 81(3) Treaty on the Functioning of the European Union)[7]. There is a certain competition between Brussels and The Hague[8]. Often the European conflict rules take precedence over the Hague rules. However, there are also cases where the EU regulates only one part of a problem and accepts that the Member States follow in the other respects the Hague rules. This is the case here. Nonetheless, additional rules are necessary because European Member States wish to intensify their cooperation. The 1980 Hague Convention is essentially merely a treaty on legal assistance with its own system of return proceedings[9]. Despite the European dimension, intra-EU-cases use the same structure for abduction cases as do other

[4] Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, 1343 U.N.T.S. 89, hereinafter called the 1980 Hague Convention.

[5] https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction/ (access 20.10.2021).

[6] https://www.incadat.com/en (access 20.10.2021).

[7] Treaty on the Functioning of the European Union (consolidated version OJ 2012 C 326, p. 47); see B. Hess, *Europäisches Zivilprozessrecht*, Berlin 2021, no. 2.25 et seq.

[8] See A. Schulz, *Die EU und die Haager Konferenz für Internationales Privatrecht* [in:] *Kohärenz im Internationalen Privat- und Verfahrensrecht der Europäischen Union*, ed. J. von Hein, G. Rühl, Tübingen 2016, p. 110 et seq.; J. Basedow, *EU-Kollisionsrecht und Haager Konferenz*, "Praxis des Internationalen Privat- und Verfahrensrechts" 2017, p. 194 et seq.; B. Hess, *Europäisches...*, no. 5.64 et seq.

[9] See J. Antomo, *Internationale Kindesentführung oder Rückkehr in die Heimat*, "Praxis des Internationalen Privat- und Verfahrensrechts" 2019, p. 405–406. But see also M. Hatápka, *Article 11 of the Brussels IIa Regulation*, "International Family Law" 2014, p. 182, who believes that the 1980 Hague Convention is basically a jurisdiction selection treaty.

international cases. It is not only in its final provisions (Art. 96 of the Brussels II ter Regulation) but also in the beginning of Art. 1(3) of the Brussels II ter Regulation that the new Regulation expressly states that its provisions complement the 1980 Hague Convention[10].

The relationship between the 1980 Hague Convention and the Regulation has never been easy. Already at the time of the implementation of the Brussels II bis Regulation, it was asked whether this would be a "symbiotic relationship" or a "forced partnership"[11]. However, the radical proposal to delete the return proceedings in the Regulation[12] did not meet with consensus. Instead, there occurred a nearly full integration of the admittedly peculiar return proceedings in the framework of the Regulation. Today, detailed Recitals in the Brussels ter Regulation explain at great length the – not always easily understood – interplay of the Regulation and the 1980 Hague Convention.

2.2. The Reform of the Brussels II bis Regulation

The Brussels II bis Regulation of 2003 already dealt with child abduction[13]. However, deficits in the application of the Regulation, particularly in the area of parental responsibility, were known and the need for a reform had been felt for a long time[14]. After almost three years following the European Commission proposal of 2016[15], the Brussels II ter Regulation was adopted. Child abduction in the context of parental responsibility was an important issue, but only one of many addressed by the reform. After a lengthy debate, a new chapter on international child abduction – one dealing with most but not all questions of child abduction – has been introduced in place of the former Art. 11 of the Brussels II bis Regulation, as had been proposed already by the Commission[16]. Now, the

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[10] See Article 22 of the Brussels II ter Regulation and also Recital 16; H. Deuschl, *Kindesentführungen: Das Zusammenspiel HKÜ und VO 2019/1111*, "Neue Zeitschrift für Familienrecht" 2021, p. 149–150.

[11] P. McEleavy, *The New Child Abduction Regime in the European Community*, "Journal of Private International Law" 2005/5, p. 33 et seq.

[12] M. Hatápka, *Article 11...*, p. 182 et seq. – seemingly also J. Antomo, *Die Neufassung der Brüssel IIa-Verordnung* [in:] *Europäisches Familien- und Erbrecht*, ed. T. Pfeiffer, Q.C. Lobach, T. Rapp, Köln 2020, p. 13, p. 53 et seq.; contra I. Curry-Sumner, *The Revision of Brussels IIbis*, "Nederlands Internationaal Privaatrecht" 2015, p. 1 et seq.

[13] Articles 11 and 12 of the Brussels II bis Regulation.

[14] See the Report from the Commission (COM(2014) 225 final); J. Antomo, *Die Neufassung...*, p. 13, 15 et seq.

[15] The Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) COM(2016) 411/2 – see C. Honorati, *The Commission's proposal for a recast of the Brussels IIa Regulation*, "International Family Law" 2017, p. 97 et seq.; A. Rosenberg, *Revision der Verordnung Brüssel IIa*, "Interdisziplinäre Zeitschrift für Familienrecht" 2017, p. 289 et seq.; M.-P. Weller, *Die Reform der EuEheVO*, "Praxis des Internationalen Privat- und Verfahrensrechts" 2017, p. 222 et seq.

[16] See P. Beaumont, L. Walker, J. Holliday, *Parental Responsibility and International Child Abduction in the proposed recast of the Brussels IIa Regulation and the effect of Brexit on future child abduction proceedings*, "International Family Law Journal" 2016, p. 307–318; M.-P. Weller, *Die Reform...*, p. 222–223.

special provisions on international child abduction (Arts. 23 to 29 of Brussels II ter Regulation) as well as the general provisions (Chapter VI) of the Regulation apply and complement the 1980 Hague Convention (Art. 22 of Brussels II ter Regulation). Additionally, some other provisions affect some details relevant for child abduction cases.

The judge must also follow the national rules of his *lex fori*, which, however, may contain impediments to effective enforcement[17]. The Brussels II ter Regulation does not contain many uniform rules overriding national proceedings; however, there are some rules of such a nature as regards enforcement. Some national implementing provisions are necessary to be adopted. In some cases, the Brussels II ter Regulation even makes reference to national procedural rules (7.2.)[18].

3. Procedural challenges

3.1. Challenges

The main concern in international child abduction cases is the return of the child. To achieve this goal several procedural challenges have to be met. There are different courts and authorities in different jurisdictions, the State of origin and the State of refuge. The formulation of an exact borderline between the tasks in the respective jurisdictions is difficult. The personal situation of the child is at the centre of the problems. However, different interests of the parties, very often the parents, have to be taken into account. What is more, almost always there are contradicting expectations of the parties. The State of refuge can issue a "non-return order" when there are concerns about a return to the State of origin. There is a general duty of cooperation of Member States under EU law (Art. 4(3) of the Treaty on European Union). This, however, has to be specified in the different fields of international family law and procedure. Here there are several stages of proceedings – mainly the jurisdiction, conduct of proceedings, recognition and enforcement – that need to be managed in different countries. The Recitals of the Brussels II ter Regulation stress several times the principle of mutual trust[19], which is one of the fundamental principles in the framework of the European judicial area[20]. Today there is an impressive number of regulations in the field of judicial cooperation. Nevertheless, the respective rules have to be filled with life. The primary intention of the 1980 Hague Convention is to preserve whatever the status quo child custody arrangement existed immediately before an alleged wrongful removal or retention. In the child abduction proceedings, no final solution will be found for the parental responsibility itself or for the welfare of the child; instead, only narrow issues having a relation to the issue of child

[17] C. Honorati, *The Commission's proposal...*, p. 97.
[18] See Article 57 of the Brussels II ter Regulation, Recital 54.
[19] Recitals 3, 54 and 55.
[20] In greater detail B. Hess, *Europäisches...*, no. 3.21 et seq.

abduction have to be decided (cf. Art. 19 of the 1980 Hague Convention). Such an isolation of the specific issues of abduction and return is, however, easier required than done. Special proceedings adapted to the special purposes of the judicial efforts are necessary. Identifying an instance of child abduction also depends on the question of who has been attributed custody rights (cf. Art. 3 of the 1980 Hague Convention). There are different role expectations concerning the parents and children, and often there are already ongoing proceedings on the substance of rights of custody[21]. There has to be a coordination between these different kinds of procedures not only for the main proceedings of first instance, but also for the stage of enforcement. The courts may not uniformly assess the situation of the child and whether there is a risk of grave harm. The child should be returned to his/her habitual residence as soon as possible. The length of proceedings and the time factor are important not only because the situation of the child may change, but because the passage of time may result in irreversible facts, over time there can be a growing harm for the child or the child may become increasingly accustomed to his or her new situation. However, in reality painfully long proceedings were often the norm, which led to complaints made by parents before the European Court for Human Rights[22]. The necessity of expeditious proceedings is obvious (see 5.2.). Child abduction is often a part of a wider family or marital conflict. One peculiarity of the problem is the emotional and socio-economic situation. Particularly for mothers it should be more promising not to flee to their family of origin in their home country but to pursue legal means. One has also to take into account that a child abduction is often only one event in an evolving family conflict. In the end, the abduction is often accepted. Even in contested cases, where a return of the child has been ordered these decisions are often not enforced[23]. Child abduction often receives great attention in the public. The initiation of proceedings against the child abductor is often seen with sympathy, but, nevertheless, the environment is not always favourable for the left behind parent. There is a tendency to show more understanding for the abducting parent in the jurisdiction of the court and in his or her homeland. There are associations of parents of abducted children fighting for the return of their children. Books, films, newspapers and TV dramatise cases, sometimes reaching the dimensions of an information war. National prestige, national pride and political interference tend to have some influence, too. Then, the call is not for the international collaboration but for a fight for our "own children" and parents. On the other hand, sufficient resources are often not available in the judicial system for costly and time consuming proceedings. Yet the creation of legal certainty is indispensable for the functioning of the internal market also as regards family relations.

[21] Cf. H. Deuschl, *Kindesentführungen...*, p. 149–150.

[22] See M. Brosch, *Die Neufassung der Brüssel IIa-Verordnung*, "Zeitschrift für das Privatrecht der Europäischen Union" 2020, p. 179–185.

[23] See P. Beaumont, L. Walker, J. Holliday, *Conflicts of EU courts on child abduction*, "Journal of Private International Law" 2016/12, p. 211, 229 et seq.

3.2. Answers

It is obviously not possible to make child abduction vanish with a wave of a magic wand. The different challenges ask for differentiated solutions. There have to be provisions for the courts; procedural guarantees have to be observed. The competence and cooperation of central authorities has to be clarified. However, the matter is basically in the hands of national jurisdictions. The only overarching judicial institutions are the Court of Justice of the European Union (hereinafter called CJEU) and the European Court of Human Rights (ECtHR). Conflicts between EU courts on child abduction matters are not excluded. The CJEU is competent for the interpretation of European law. The case law of the Court of Justice of the European Union tries to achieve as much uniformity of interpretation and application as possible along with a smooth functioning of the Regulation. The ECtHR oversees the respect of European human rights, particularly of the protection of family life[24].

The new Regulation provides clearer structures and specific rules for the peculiarities of the return proceedings. There are distinctive rules where there is a return or a non-return order and a precise course of action (see 5.5., 5.6.). One has also to take into account a growing tendency to de-dramatise the conflicts and to use more mediation (see 5.8.).

An overall feature of the new Regulation is that it tries to enhance cooperation on several levels[25]. As concerns the courts, there is to be an exchange of information between courts, specifically the transmission of court documents between the involved courts and direct communication between the judges. The use and promotion of the European Judicial Network in civil and commercial matters is also proposed[26]. Communication with national authorities, particularly the Central Authority[27], is another element.

4. Jurisdiction

4.1. Jurisdiction under Brussels II ter Regulation

The general jurisdiction criterion has remained unchanged. Based on the principle of proximity, jurisdiction in cases of parental responsibility generally rests with the court of the country of the child's habitual residence (Art. 7 of the Brussels II ter Regulation)[28]. As with earlier instruments, the Brussels II ter Regulation neither defines nor clarifies the

[24] Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221.

[25] See in more detail on the Reform Proposal, C. Honorati, *The Commission's proposal...*, p. 97, 113 et seq.

[26] See Recitals 45, 46, 79 – Cf. A. Schulz, *The Cooperation between Central Authorities under the Brussels IIa Regulation* [in:] *Planning the Future of Cross Border Families*, ed. I. Viarengo, F.C. Villata, Oxford 2020, p. 399, 410 et seq.

[27] Article 79 (d) of the Regulation; Recital 45.

[28] See C. Honorati, *The Commission's proposal...*, p. 97–99.

notion of habitual residence, instead following the generally accepted concept. However, Art. 9 of the Brussels II ter Regulation makes some exceptions from the remaining jurisdiction of the State of origin. Without prejudice to the general rule on choice of court, Art. 10 applies also to child abduction (Art. 9 of the Brussels II ter Regulation). This means that the parties can make a choice of court under which the courts of the State of refuge will be competent also for other matters concerning the child[29].

The habitual residence of a child is based on several factors and demands some degree of integration by the child in a social and family environment[30]. Generally, habitual residence demands the physical presence of the child[31]. With regard to jurisdiction, child abduction is regulated in the framework of the regulation for parental responsibility but modified in some provisions.

4.2. Jurisdiction in cases of the wrongful removal or retention of a child

There are cases where the parents are separated or where they have changed their habitual residence. A child's habitual residence can also change over time and is unique to the facts of the case. Then difficulties may also arise in the determination of the child's habitual residence in the context of child abduction[32].

"Wrongful removal or retention" is defined by the Regulation[33]. It means the removal or retention of a child in breach of rights of custody acquired by a decision, by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention. This is subject to the condition that at the time of removal or retention, the rights of custody were actually exercised or would have been so exercised but for the removal or retention.

In the event of an abduction, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention retain in principle their jurisdiction (Art. 9 of the Brussels II ter Regulation). Determining that the relevant State is the country where the child was habitually resident before the wrongful removal or retention is not only necessary for the decision whether the child's removal or retention was lawful; it also has the consequence that the court in the State of origin is in a strong position[34] (cf. 5.6., pkt 1).

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[29] Recitals 22, 43 – J. Antomo, *Die Neufassung...*, p. 13–36; U.P. Gruber, L. Möller, *Die Neufassung der EuEheVO*, "Praxis des Internationalen Privat- und Verfahrensrechts" 2020, p. 393–394; B. Musseva, *The recast of the Brussels IIa Regulation: the sweet and sour fruits of unanimity*, "ERA Forum" 2020/21, p. 129, 132 et seq.

[30] The Court of Justice of the European Union (CJEU) 22 December 2010, C-497/10 PPU, Mercredi v. Chaffe, ECLI:EU:C:2010:829, Rec. 2010 I-4309, para. 56.

[31] CJEU 17 October 2018, C-393/18 PPU, UD v. XB, ECLI:EU:C:2018:835, para. 53.

[32] J. Antomo, *Internationale Kindesentführung...*, p. 405 et seq.

[33] Article 2 (2) (11) – see A. Schulz, *Die Neufassung der Brüssel IIa-Verordnung*, "Zeitschrift für das gesamte Familienrecht" 2020, p. 1141–1144.

[34] See also Article 29(6) of the Regulation.

The courts of the Member State of origin lose their jurisdiction only under certain circumstances. The conditions for this are listed in Art. 9 of the Brussels II ter Regulation (former Art. 10). The basic requirement is that the child has acquired a habitual residence in another Member State. However, there are some additional requirements which have to be met.

The first requirement is the acceptance of the removal or retention, that is to say a situation in which a person, institution or other body having rights of custody has acquiesced to the removal or retention (Art. 9(a) of the Brussels II ter Regulation). The second case for the loss of the original jurisdiction is that the child has resided in the other Member State for a period of at least one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment (Art. 9(b) of the Brussels II ter Regulation). It is necessary, however, that in addition to residence for at least one year, at least one of the following alternative conditions has been met: the holder of rights of custody has had or should have had some knowledge of the whereabouts of the child; or no application for return has been lodged with the competent authorities of the Member State to which the child has been removed or where the child is being retained (Art. 9(b)(i)).

Another alternative is that an application for return has been withdrawn and no new application has been lodged (Art. 9(b)(ii)). It is also sufficient that an application for return was refused by a court of a Member State on grounds other than point (b) of Art. 13(1) or Art. 13(2) of the 1980 Hague Convention and that decision of refusal is no longer subject to ordinary appeal (Art. 9(b)(iii) of the Brussels II ter Regulation). This factual condition has been newly introduced in the version of 2019[35].

The fourth reason is that no court was seised in the Member State where the child was habitually resident immediately before the wrongful removal or retention (Art. 9(b)(iv)). The final reason is that a decision on rights of custody that does not entail the return of the child has been given by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention (Art. 9(b)(v)).

5. Court proceedings

5.1. The Approach of the Brussels II ter Regulation

The main goal of the reform is that international child abduction and other cross border parental responsibility issues should be dealt with in a more expeditious and efficient manner. The basic structure of the Regulation has remained unchanged. However, aiming at introducing some improvement the Brussels II ter Regulation makes numerous clarifications and uses a whole set of measures. There is now a better structure for the different stages of the court proceedings, and there are clearer definitions of certain situations. Amendments include rules on the setting of time limits, though these have often been

[35] See C. Honorati, *The Commission's proposal...*, p. 97–99.

disregarded in the past. There are now better rules for communication with other courts and the Central Authorities[36]. The transmittal of certain uniform certificates which provide the necessary information for other institutions is also provided for. Throughout the Regulation it is clarified whether matters of child abduction are covered by the general provisions on parental responsibility or if there are special rules.

5.2. Expeditious court proceedings

It is presumed that a swift return of the child to the State of origin serves the best interests of the child. The 1980 Hague Convention provides a summary procedure in order to return children wrongfully removed from or retained outside of their country of habitual residence, so that long-term decisions about the future of the child can be made in the State of origin.

The Regulation explicitly stresses the necessity of speeding up proceedings[37]. A court to which an application for the return of a child is made is to act expeditiously in proceedings on the application, using the most expeditious procedures available under national law (Art. 24(1) of the Brussels II ter Regulation). This is in line with Art. 11 of the 1980 Hague Convention. Since in the past this goal has often been disregarded, the need for swiftness has been reinforced in the new Regulation. Clear deadlines should ensure that abduction cases are treated in the most expeditious manner[38]. Except where exceptional circumstances make this impossible, a court of first instance is to give its decision no later than six weeks after it is seised (Art. 24(2) of the Brussels II ter Regulation)[39].

Unless where exceptional circumstances make this impossible, a court of higher instance is to give its decision no later than six weeks after all the required procedural steps have been taken and the court is in a position to examine the appeal (Art. 24(3) of the Brussels II ter Regulation).

Concentrating the return proceedings in some courts may be helpful[40]. For example, in Germany only one court of first instance within the judicial district of a court of appeal is competent for child abduction cases[41]. In other countries, such as the Netherlands, just one court exercises such jurisdiction. Better trained and specialised judges are an important factor for faster and more efficient proceedings. However, in contrast to the Proposal[42], this has only been recommended and not made obligatory under the Regula-

[36] M. Brosch, *Die Neufassung...*, p. 179–184.

[37] See Recital 40, Article 60 for enforcement.

[38] See for the reform proposal, M.-P. Weller, *Die Reform...*, p. 222, 225 et seq.

[39] Recital 42 – a six-week-period was also in the Commission Proposal for the Central Authority but is not included in the final version, cf. C. Honorati, *The Commission's proposal...*, p. 97–104.

[40] C. Honorati, *The Commission's proposal...*, p. 97, 102 et seq.

[41] See for Germany § 12 Internationales Familienrechtsverfahrensgesetz (International Family Law Procedure Act). Cf. A. Rosenberg, *Revision...*, p. 289–290.

[42] See C. Honorati, *The Commission's proposal...*, p. 97, 102 et seq.; A. Rosenberg, *Revision...*, p. 289–290.

tion[43]. The Commission Proposal contained also a provision that only one appeal should be possible[44]. This has not been included in the final version of the text of the Regulation[45].

5.3. Hearing of the parties and the child

The right to be heard, recognised by the European Charter of Rights, is a fundamental procedural guarantee[46]. A court cannot refuse to return a child unless the person seeking the return of the child, i.e. the left behind parent, has been given an opportunity to be heard (Art. 27(1) of the Brussels II ter Regulation). However, one of the main goals of the reform was to strengthen the position of the child[47]. There is also a right of a child "capable of understanding" to express his or her views in the return proceedings (Art. 26 in conjunction with Art. 21 of the Brussels II ter Regulation). In the adversarial hearing of the parents in the return proceeding, there is often not enough room for an assessment of the situation of the child and the family[48].

In the past the CJEU accepted even that a return-decision could be recognised despite the fact that there had been no hearing of the child and instead only a false certificate had been issued[49]. The general provision of the Brussels II ter Regulation (Art. 21) gives the child the right to express his or her views in matters of parental responsibility. It is expressly stated that this is also to apply in the return proceedings under the 1980 Hague Convention (Art. 26 of the Brussels II ter Regulation)[50]. The details on the hearing of the child are left to national law[51].

It has to be included in the certificate on a decision of return (Art. 47(3)(b) of the Brussels II ter Regulation) that the child had an occasion to express his or her views. However, the absence of a hearing is as such not a ground for non-recognition. But there can be a rectification or withdrawal of the certificate (Art. 48 of the Brussels II ter Regulation). However, in contrast to the rules on parental responsibility, the non-hearing of the child is not a ground for the refusal of recognition[52].

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43 Recital 41 – Critical J. Antomo, *Die Neufassung...*, p. 13–52.

44 See C. Honorati, *The Commission's proposal...*, p. 97, 105 et seq.; A. Rosenberg, *Revision...*, p. 289–290.

45 Recital 42. See C. Honorati, *The Commission's proposal...*, p. 97–105.

46 Article 24(1) of the Charter of Fundamental Rights of the European Union (OJ 2012 C 326, p. 391); B. Ubertazzi, *The hearing...*, p. 568–581.

47 J. Antomo, *Die Neufassung...*, p. 13, 42 et seq.; C. Honorati, *The Commission's proposal...*, p. 97, 101 et seq.; B. Ubertazzi, *The hearing...*, p. 568, 594 et seq.; B. Musseva, *The recast...*, p. 129, 135 et seq.

48 See J. Antomo, *Internationale Kindesentführung...*, p. 405–412 f.

49 CJEU 22 December 2010, C-491/10 PPU, Aguirre Zarraga v. Simone Pelz, ECLI:EU:C:2010:828, Rec. 2010 I-14247. See in more detail, K. Raffai, *The Principle of Mutual Trust Versus the Child's Right to be Heard*, "Hungarian Journal of Legal Studies" 2016/57, p. 76 et seq.

50 See for the reform proposal M.-P. Weller, *Die Reform...*, p. 222–227.

51 M. Brosch, *Die Neufassung...*, p. 179–184. Critical B. Ubertazzi, *The hearing...*, p. 568, 597 et seq.

52 M. Brosch, *Die Neufassung...*, p. 179–186; B. Ubertazzi, *The hearing...*, p. 568, 597 et seq.

5.4. Coordination between proceedings in the State of origin and the State of refuge

A thorny issue is the coordination between proceedings in the State of origin and in the State of refuge. Often there are not only return proceedings in the State of refuge pending but also custody proceedings in the State of origin. In the worst case, there develops a nearly inextricable tangle of applications, several appeals and interim measures in both States.

The cause of action of the proceedings is in principle not the same. Whereas the return proceedings only try to re-establish the *status quo* and in principle do not cover the substance of parental responsibility (cf. Art. 19 of the 1980 Hague Convention)[53], in the State of origin the substance of parental responsibly and the welfare of the child are at the centre of the proceedings. Therefore several questions arise: What is the competence of each of the national courts? What kind of influence do the proceedings have and what chronological order should the decisions be given? The Regulation tries to achieve some ordering of the proceedings with differentiated rules for several situations. Better information with the help of certificates is intended to help the courts maintain an overview.

Art. 16 of the 1980 Hague Convention already says that the authorities of the State of refuge are not to rule on the merits of the rights of custody issue until it has been determined that the child is not to be returned under the Convention. However, the court in the State of refuge may render some decisions dealing with situations where there seems to be a danger in the State of origin. This means that there is a broadening of the competence so as to allow for provisional, including protective, measures (see 5.5.). Only the future will tell if under the new Regulation there will be fewer conflicts of courts.

5.5. Procedure for the return of a child

The crucial issue of return proceedings is whether there is a ground for refusal under the 1980 Hague Convention. One of these grounds is a situation where the person, institution or other body having the care of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced to the removal or retention (Art. 13(1)(a) of the 1980 Hague Convention). One of the most raised grounds is that the child's return would expose the child to a grave risk of physical or psychological harm or otherwise place the child in an intolerable situation (Art. 13(1)(b) of the 1980 Hague Convention). The other important ground is that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views (Art. 13(2) of the 1980 Hague Convention). Since the existence of such an important ground is often heavily disputed and can be interpreted in a different way[54], it should be documented without room for

[53] See also CJEU 9 October 2014, C-376/14 PPU, C v. M, ECLI:EU:C:2014:2268, para. 40.

[54] See K. Trimmings, *Child abduction within the European Union*, Oxford 2013, p. 47 et seq.

doubt. Therefore, the substantive provisions of the Convention are now surrounded by a European procedural framework.

Where a court considers refusing to return a child solely on the of basis of a grave risk of harm, it is not to refuse to return the child if the party seeking the return of the child satisfies the court by providing sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return (Art. 27(3) of the Brussels II ter Regulation)[55]. It has to be determined what arrangements of this nature can be made under the rules of the Convention (e.g. so-called undertakings, restrictions of contact)[56]. For this purpose, the court may communicate with the competent authorities of the State of origin either directly in accordance with Art. 86 or with the assistance of Central Authorities (Art. 27(4) of the Brussels II ter Regulation)[57].

A court in the State of refuge, ordering the return of the child, may, where appropriate, take provisional, including protective, measures in accordance with Art. 15 of the Regulation, the general provision for matters of parental responsibility, in order to protect the child from the grave risk referred to in point (b) of Art. 13(1) of the 1980 Hague Convention and to further the goal of returning the child[58]. The basic idea for this exceptional rule is that the court in the State of refuge may already under these circumstances take some action for the situation in the State of origin[59]. However, it is required that the examining and taking of such measures will not unduly delay the return proceedings (Art. 27(5) of the Brussels II ter Regulation)[60]. These provisional measures (e.g. restrictions of contact) are to guarantee a "safe return" of the child, but they may not prevent the return applications in the State of origin[61]. In the past, in several cases the courts in the State of refuge used interim measures to interfere with the return proceedings by modifying the existing custody rights[62].

A decision ordering the return of the child may be declared provisionally enforceable, notwithstanding any appeal, where the return of the child before the decision on the appeal is required by the best interests of the child (Art. 27(6) of the Brussels II ter Regu-

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55 See C. Honorati, *The Commission's proposal...*, p. 97–106.

56 H. Deuschl, *Kindesentführungen...*, p. 149–151.

57 Recital 45.

58 A. Schulz, *Das Vollstreckungssystem in der neuen Brüssel Ila-Verordnung* [in:] *Standards und Abgrenzungen im internationalen Familienrecht*, ed. Ch. Budzikiewicz, B. Heiderhoff, F. Klinkhammer, K. Niethammer-Jürgens, Baden-Baden 2019, p. 93, 109 et seq.

59 I. Pretelli, *Provisional Measures in Family Law and the Brussels IIter Regulation*, "Yearbook of Private International Law" 2018–2019/20, p. 113, 143 et seq.; B. Musseva, *The recast...*, p. 129–137.

60 See for the reform proposal, C. Honorati, *The Commission's proposal...*, p. 97–106; M.-P. Weller, *Die Reform...*, p. 222, 226 et seq.

61 I. Pretelli, *Provisional Measures...*, p. 113–127; T. Garber, M. Neumayr, *Ein neues System des einstweiligen Rechtsschutzes in Europa: einstweilige Maßnahmen nach der Brüssel IIb-Verordnung* [in:] *Festschrift Thümmel*, Berlin 2020, p. 171–178.

62 See, for example, CJEU 23 December 2009, C-403/09 PPU, Detiček v. Sgueglii, ECLI:EU:C:2009:810, Rec. 2009 I-12193.

lation)[63]. There is concern, however, that this could open the possibility of a to-and-fro movement of the child between the two States and that a binding decision of the appeal court in the State of refuge would have been a better solution[64].

5.6. Refusal to return the child

1) Decision on non-return

It is not easy to draw the line between a restricted examination of the grounds for non-return and a full examination of the welfare of the child. In the past there have been spectacular cases where the court in the State of refuge ordered a non-return whereas the courts in the State of origin insisted on such return[65]. Art. 29(1) of the new Regulation thus deems it very important that in cases where a decision refusing the return of a child to another Member State is based solely on the 1980 Hague Convention's Art. 13(1)(b) (the grave risk of harm) or Art. 13(2) (the child objections to being returned), the decision should satisfy special criteria.

2) Procedure following a refusal to return the child

There are special rules for the procedure following the refusal to return the child. The court giving a decision of non-return must, on its own motion, issue a certificate using the form set out in Annex I of the Regulation. This certificate is to be completed and issued in the language of the decision (Art. 29(2) of the Brussels II ter Regulation)[66].

A problem of the old Brussels II bis procedure was that even if the return of the child had been denied in the State of refuge, a new effort for return could be started under Art. 11(6)–(8). This possibility of a "second chance procedure" (also called an "overrule procedure"[67]) has been criticised[68], and a repeal of it was proposed[69]. However, this procedure has survived the reform in a mitigated form. Where proceedings to examine the substance of rights of custody in the State of origin had already been initiated prior to the abduction, the court refusing the return must, if it is aware of these proceedings, within one month of the date of the decision transmit the files to the court in the State of origin (Art. 29(3)). This includes a copy of the decision of non-return, the certificate issued and,

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[63] Recital 47 – for more details, see A. Schulz, *Das Vollstreckungssystem...*, p. 93, 116 et seq.; H. Deuschl, *Kindesentführungen...*, p. 149–151.

[64] J. Antomo, *Die Neufassung...*, p. 13–53.

[65] See for a Slovenian-Italian case, CJEU 23 December 2009, C-403/09 PPU.

[66] H. Deuschl, *Kindesentführungen...*, p. 149, 152 et seq.

[67] I. Curry-Sumner, *The Revision...*, p. 1; W. van der Stroom-Willemsen, *De herziening Brussel II-bis en internationale kinderontvoeringszaken*, "Tijdschrift voor Familie- en Jeugdrecht" 2020, p. 335–337. Other denotations are "override procedure" (C. Honorati, *The Commission's proposal...*, p. 97–107) and "overriding mechanism" (A. Rosenberg, *Revision...*, p. 289–290); B. Musseva, *The recast...*, p. 129, 136 et seq.

[68] See T. Kruger, L. Samyn, *Brussels II bis: successes and suggested improvements*, "Journal of Private International Law" 2016/12, p. 132 et seq.

[69] P. Beaumont, L. Walker, J. Holliday, *Conflicts...*, p. 211–258; C. Honorati, *The Commission's proposal...*, p. 97, 107 et seq.

where applicable, the transcript, summary or minutes of the hearings before the court and any other documents considered relevant. The reexamination of the non-return of the child is thus not a separate proceeding but takes place in the framework of the custody matter[70]. The recognition and enforcement of a resulting decision is to be effected in accordance with Chapter IV (Art. 29(6) of the Brussels II ter Regulation)[71].

If, on the other hand, there were no prior custody proceedings in the State of origin, the parties are free to start such proceedings in this State. If, within three months of the notification of a decision, one of the parties seises a court in the Member State where the child was habitually resident immediately prior to the wrongful removal or retention in order for the court to examine the substance of rights of custody, the documents listed in Art. 29(5) are to be submitted to the court by that party (Art. 29(5) of the Brussels II ter Regulation)[72]. This includes a copy of the non-return decision, the issued certificate and, where applicable, a transcript, summary or the minutes of the hearings before the court which refused the return of the child. This means that a custody decision of the State of origin will still be the "last word"[73]. Despite the fact that the court in the State of origin is of greatest significance, the potentiality of an override under a procedure which is otherwise generally based on the principles of mutual trust and respect, remains – to say the least – little bit troublesome[74]. On the other hand, the Brussels II ter Regulation seemingly believes that the court in the State of origin will be forced to take the arguments of the court in the State of refuge into account and that the process will not merely devolve into a new initiation of the conflict.

The court in the State of origin may, where necessary, require a party to provide a translation of the decision of non-return and any other document attached to the certificate (Art. 29(4) of the Brussels II ter Regulation). Notwithstanding a decision on non-return in the State of refuge, any decision on the substance of rights of custody resulting from proceedings referred to in Art. 29(3) and (5) which entails the return of the child will be enforceable in another Member State (Art. 29(6) of the Brussels II ter Regulation).

5.7. Contact

One problem is that during the child abduction proceedings the contact between the abducted child and the left-behind parent may be lost[75]. A new possibility, which does not conflict with Art. 16 of the 1980 Hague Convention, now exists for interim decisions

[70] S. Corneloup, T. Kruger, *Le règlement 2019/1111, Bruxelles II : la protection des enfants gagne du ter(rain)*, « Revue critique de droit international privé » 2020, p. 215–223. Cf. Recital 50.

[71] For more details, see H. Deuschl, *Kindesentführungen...*, p. 149–163.

[72] See Recital 51.

[73] Critical A. Rosenberg, *Revision...*, p. 289, 290 et seq.; J. Antomo, *Die Neufassung...*, p. 13–53.

[74] M. Brosch, *Die Neufassung...*, p. 179, 186, 189.

[75] A. Schulz, *Das Vollstreckungssystem...*, p. 93–111.

on contact with the child[76]. The court may, at any stage of the proceedings, in accordance with Art. 15 of the Regulation, examine whether such contact between the child and the person seeking the return of the child should be ensured, taking into account the best interests of the child (Art. 27(2) of the Brussels II ter Regulation).

5.8. Alternative dispute resolution

Child abduction cases are often only one part of a more comprehensive family dispute and the return proceedings do not secure a lasting solution (see 3.1. above). Mediation could therefore be helpful[77]. The Brussels II ter Regulation therefore tries – though more cautiously than the Commission Proposal[78] – to stimulate the use of alternative dispute resolution so that the parties themselves can find a solution[79]. As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, is to invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this (i) is contrary to the best interests of the child, (ii) is not appropriate in the particular case or (iii) would unduly delay the proceedings (Art. 25 of the Brussels II ter Regulation). At present, such a service is often already offered by national Central Authorities.

6. Cooperation in international child abduction between Central Authorities

There is a Central Authority in each Member State which functions as the contact point for all applications and thus facilitates the return of abducted children. Consequently, there is a structure of Central Authorities in all Member States dealing with international and European cases. The national structure of the Authorities is not the same in every Member State. In many countries the Central Authority is a part of the Ministry of Justice; in Germany it is a part of the separate Federal Office of Justice, which is competent also in other fields of international cooperation[80]. The provisions on child abduction in the Regulation (see Art. 22 of the Brussels II ter Regulation) have to be distinguished from those on matters of parental responsibility (Chapter V, Art. 76 et seq. of the Brussels II ter Regulation)[81]. For child abduction cases, there are several provisions whereby the Central Authority can be involved in the provision of information or transmission of

[76] See A. Schulz, *Die Neufassung...*, p. 1141, 1144 et seq.; A. Schulz, *Das Vollstreckungssystem...*, p. 93, 111 et seq.

[77] See J. Antomo, *Internationale Kindesentführung...*, p. 405, 412 et seq.

[78] C. Honorati, *The Commission's proposal...*, p. 97–104; M. Brosch, *Die Neufassung...*, p. 179–185.

[79] See Recital 44.

[80] See for Germany, § 3 Internationales Familienrechtsverfahrensgesetz (International Family Law Procedure Act).

[81] See Recital 73.

documents or support[82]. There are, however, only few provisions concerning the application in child abduction cases in the Chapter on Child abduction itself, such as Art. 23 of the Brussels II ter Regulation for the receipt and processing of applications by the Central Authority.

The main task of the Central Authority is providing support to the left-behind parent. The requested Central Authority is to act expeditiously in the processing of an application (Art. 23(1) of the Brussels II ter Regulation). Where the Central Authority of the requested Member State receives a *return application,* it must, within five working days from the date of application filing, acknowledge its receipt. Without undue delay, it is to inform the Central Authority of the requesting Member State or the applicant, as appropriate, as to what initial steps have been or will be taken to deal with the application, and it may request any further necessary documents and information (Art. 23(2) of the Brussels II ter Regulation). There is, however, no express deadline[83].

7. Recognition and enforcement

7.1. In general

As in the old Brussels II bis Regulation, there are provisions on the recognition and enforcement of foreign decisions. One goal of the reform is that decisions should be swiftly enforced. Chapter III (Arts. 22 et seq. of the Brussels II ter Regulation) and Chapter IV (Arts. 30 et seq. of the Brussels II ter Regulation) apply specifically to the decisions ordering the return of a child to another Member State (Arts. 1(3)(1) et seq. of the Brussels II ter Regulation). The application to the decisions which also have to be enforced in a Member State other than the Member State where they were given means that such recognition and enforcement are possible not only in the States involved in a return proceeding, but also in third States (Arts. 1(3)(2) et seq. of the Brussels II ter Regulation). The extension to third States will become relevant, however, only in a small number of cases[84]. It is to be avoided that new proceedings have to be started in another Member State due to a further abduction after having ordered the return[85].

The decision may order the return or the retention of a child. A certificate for a decision ordering the return of a child is to be issued (Art. 36(1)(c) of the Regulation). The "Decision" is defined broadly and includes decrees, orders or judgments (Art. 2(1)(a) of the Brussels II ter Regulation). However, provisional measures are decisions only when

[82] See Recital 74 et seq.

[83] The intention of the Commission to introduce a triple deadline (6 weeks [for the Central Authority] + 6 weeks [for the court of first instance] + 6 weeks [for the appeal proceedings]) has therefore not totally been realized, cf. C. Honorati, *The Commission's proposal...*, p. 97, 104 et seq.; A. Rosenberg, *Revision...*, p. 289–290; M. Brosch, *Die Neufassung...*, p. 179, 184 et seq.

[84] A. Schulz, *Das Vollstreckungssystem...*, p. 93–108.

[85] Recital 16.

they were served on the respondent prior to their enforcement (Art. 2(1), last sentence, of the Brussels II ter Regulation)[86].

7.2. The enforcement of decisions ordering the return of a child

1) Privileged decisions

The Brussels II ter Regulation creates a separate category of "privileged decisions". These are decisions in so far as they grant the rights of access and decisions under the override procedure and to the extent that they entail the return of the child (Art. 42(1) (b) of the Brussels II ter Regulation). Such a decision is to be recognised in the other Member States without any special procedure being required (Art. 43(1) of the Brussels II ter Regulation). In child abduction cases, an exequatur is not necessary also as regards the enforcement (Art. 45(1) of the Brussels II ter Regulation), which means that the direct enforcement is possible.

There is a special provision on the enforcement of decisions ordering the return of a child. The enforcement procedure as such remains governed by the law of the Member State of enforcement (Art. 51(1) of the Brussels II ter Regulation)[87]. However, there are some harmonised grounds for the suspension or refusal of enforcement which can be used in the State of enforcement (Art. 56)[88]. These restrictions are intended to prevent a violation of the welfare of the child, which in the past incited complaints to the ECtHR[89].

An authority competent for the enforcement, to which application is made for the enforcement of a decision ordering the return of a child to another Member State[90], is required to act expeditiously in processing the application (Art. 28(1) of the Brussels II ter Regulation). There is no special sanction in the Regulation for any delay. However, where a return decision has not been enforced within six weeks of the date when the enforcement proceedings were initiated, the party seeking enforcement or the Central Authority of the Member State of enforcement has the right to request from the authority competent for the enforcement a statement indicating the reasons for the delay (Art. 28(2) of the Brussels II ter Regulation).

The party invoking such a privileged decision is required to produce a copy of the decision (see the form in Annexe IV) and a certificate (see the form in Annexe VI) issued

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[86] B. Musseva, *The recast...*, p. 129–131 – however, in the absence of service, the recognition and enforcement are not excluded under national law; Recital 59; I. Pretelli, *Provisional Measures...*, p. 113, 144 et seq.

[87] L. Frohn, I. Sumner, *Herziening Brussel II bis*, "Nederlands Internationaal Privaatrecht" 2020, p. 391–409; A. Schulz, *Das Vollstreckungssystem...*, p. 93–101; H. Deuschl, *Kindesentführungen...*, p. 149–151.

[88] See A. Schulz, *Das Vollstreckungssystem...*, p. 93, 103 et seq.; M. Brosch, *Die Neufassung...*, p. 179–186: public policy clause. For the reform proposal, see C. Honorati, *The Commission's proposal...*, p. 97, 109 et seq.; M.-P. Weller, *Die Reform...*, p. 222–228.

[89] M. Brosch, *Die Neufassung...*, p. 179, 186 et seq.

[90] See Art. 52 of the Regulation; A. Schulz, *Das Vollstreckungssystem...*, p. 93, 119 et seq.

pursuant to Art. 47 (Art. 43 (2) of the Brussels II ter Regulation). A stay of proceedings is possible (Art. 44).

2) Grounds for refusal

In matters of parental responsibility, there can be an application for an examination if there are grounds for refusing the recognition of a decision (Art. 39 of the Brussels II ter Regulation). But this is not applicable for return proceedings. These decisions follow a separate regime[91]. Nevertheless, one cannot turn a blind eye to the risk that decisions with grave deficits will also have to be recognised. Despite the fact that the public policy was included as a ground for refusal in the Commission Proposal[92], it is not a ground under the Brussels II ter Regulation. Here, the special rules on enforceable decisions apply. A privileged decision which is enforceable in the State of origin is enforceable in the other Member States without any declaration of enforceability being required (Art. 45(1) of the Brussels II ter Regulation). For the purposes of enforcement of a privileged decision in another Member State, the courts of the Member State of origin may declare the decision provisionally enforceable notwithstanding any appeal (Art. 45(2) of the Brussels II ter Regulation).

The international and European rules aim at avoiding the rendering of conflicting decisions by the State of origin and the State of refuge. There is no possibility of opposing a decision's recognition unless and to the extent that it is found to be irreconcilable with a later decision as referred to in Art. 50 (Art. 43 (1) of the Brussels II ter Regulation). This can also be a decision in the State of enforcement[93]. In contrast to other decisions in the field of parental responsibility, this is the only ground for refusing such recognition and enforcement[94].

Once the stage of enforcement is reached it is important that a decision cannot be blocked by the abductor[95] or by the start of a new investigation into the welfare of the child. In the past there were sometimes tendencies in the case law of the ECtHR to apply the same standard as in custody cases[96]. An extensive investigation into the welfare of the child could, however, block the return of a child[97]. The Brussels II ter Regulation aims to avoid such frictions[98].

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91 M. Brosch, *Die Neufassung...*, p. 179–186; H. Deuschl, *Kindesentführungen...*, p. 149–152.

92 See C. Honorati, *The Commission's proposal...*, p. 97–110; A. Rosenberg, *Revision...*, p. 289–291. Critical J. Antomo, *Die Neufassung...*, p. 13, 48 et seq.

93 M. Brosch, *Die Neufassung...*, p. 179–185.

94 A. Schulz, *Das Vollstreckungssystem...*, p. 93–102.

95 Therefore it is critical for the requirement of service under Art. 55 of the Brussels IIa (Recast); B. Hess, *Europäisches...*, no. 7.113.

96 Neulinger & Shuruk v. Switzerland (Grand Chamber; GC), no. 41615/07, (2010) ECtHR 1053, INCADAT HC/E/ 1323; X v. Latvia (GC), no. 27853/09, (2014) 59 ECtHR 100, INCADAT HC/E/1234.

97 N. Lowe, *Strasbourg in harmony with The Hague and Luxembourg over child abduction?* [in:] *Festschrift Coester-Waltjen*, Bielefeld 2015, p. 543 et seq.; D. Martiny, *Internationale Kindesentführung und europäischer Menschenrechtsschutz* [in:] *Festschrift Coester-Waltjen*, Bielefeld 2015, p. 597 et seq.

98 R. Lamont, *Protecting children's rights after child abduction: the interaction of the CJEU and ECtHR in interpreting Brussels II bis* [in:] *Fundamental rights and best interests of the child in transnational*

3) The suspension of enforcement proceedings and refusal of enforcement

The suspension of the enforcement proceedings or even a refusal of enforcement is possible under Art. 56, which is also applicable to privileged decisions[99]. The authority competent for the enforcement is required to suspend the enforcement proceedings where the enforceability of the decision is suspended in the Member State of origin (Art. 56(1) of the Brussels II ter Regulation).

There are four other cases where the authority has discretion to suspend proceedings, viz:[100] (i) an appeal against the decision has been lodged in the State of origin (Art. 56(2) (a) of the Brussels II ter Regulation); (ii) the time for an ordinary appeal has not yet expired (Art. 56(2) (b)); (iii) an application for refusal of enforcement has been submitted (Art. 56(2) (c)); (iv) the person against whom such enforcement is sought has applied in accordance with Art. 48 for the withdrawal of a certificate issued pursuant to Art. 47 (Art. 56(2) (d) of the Brussels II ter Regulation).

In exceptional cases, the authority competent for enforcement may suspend the enforcement proceedings if the enforcement would expose the child to a grave risk of physical or psychological harm due to temporary impediments which have arisen after the decision was given, or by virtue of any other significant change of circumstances (Art. 56(4) of the Brussels II ter Regulation). Where this grave risk (which should be interpreted in a manner similar to Art. 13(1)(b) of the 1980 Hague Convention[101]) is of a lasting nature, the authority competent for enforcement or the court, upon application, may refuse to enforce the decision (Art. 56(6) of the Brussels II ter Regulation)[102]. This provision is of great importance since it may suggest to abductors a means of blocking enforcement.

According to Art. 57 of the Brussels II ter Regulation a party may also invoke grounds for suspension or refusal of enforcement under national law as long as they are not incompatible with the Regulation. There is the concern that this may be used for a *révision au fond*[103] or may lead to other frictions[104]. In any case, it is inevitable that many problems will have to be solved in the framework of national enforcement law[105].

8. Conclusion

In the past there were many doubts about the effectiveness of the Brussels II bis Regulation in child abduction cases. With the new Brussels II ter Regulation, there is

families, eds. E. Bergamini, Ch. Ragni, F. Deana, Cambridge 2019, p. 225 et seq.; B. Musseva, *The recast...*, p. 129–140.

[99] A. Schulz, *Das Vollstreckungssystem...*, p. 93–103; B. Musseva, *The recast...*, p. 129–139.

[100] Recital 67 et seq.; A. Schulz, *Das Vollstreckungssystem...*, p. 93, 105, 117.

[101] A. Schulz, *Das Vollstreckungssystem...*, p. 93–106.

[102] Critical, because this could be an incentive for the abductor to block the enforcement, B. Hess, *Europäisches...*, no. 7.134.

[103] U.P. Gruber, L. Möller, *Die Neufassung...*, p. 393, 404 et seq.

[104] J. Antomo, *Die Neufassung...*, p. 13, 50 et seq.

[105] See in more detail, C. Honorati, *The Commission's proposal...*, p. 97, 119 et seq.

now a modernised and detailed legal instrument available which complements the 1980 Hague Convention on child abduction. The position of the child has been strengthened. Despite the fact that not all Commission Proposals could be realised, the amended text together with its extensive Recitals will create more legal certainty and predictability. The new Regulation is more complex than the old one, but in general it is well structured. Very detailed rules ensure legal certainty and have to be respected. It is to be hoped that the many formalities will provide assistance and clear guidance and not add new complications. The Recitals stress mutual trust on several occasions. The general approach of giving more information and organising more cooperation between the national authorities and Central Authorities also seems appropriate in the attempt to reach the goals of the Regulation.

Abstrakt

Zacieśnienie współpracy sądowej w sprawach dotyczących uprowadzenia dziecka za granicę w Unii Europejskiej

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Rozporządzenie Rady (UE) 2019/1111 z 25.06.2019 r. w sprawie jurysdykcji, uznawania i wykonywania orzeczeń w sprawach małżeńskich i w sprawach dotyczących odpowiedzialności rodzicielskiej oraz w sprawie uprowadzenia dziecka za granicę (wersja przekształcona) zawiera nowe, obszerne przepisy dotyczące uprowadzenia dziecka za granicę. Przepisy te, a zwłaszcza rozdział III (art. 22–29) Rozporządzenia uzupełniają regulację Konwencji haskiej z 1980 r., dotyczącej uprowadzenia dziecka za granicę. Artykuł analizuje wzajemne oddziaływanie tych dwóch źródeł prawnych w kontekście zamierzonej ściślejszej współpracy wewnątrzunijnej. Analizie poddano kwestie jurysdykcji oraz procedury powrotu dziecka w przypadku bezprawnego uprowadzenia lub zatrzymania. Uwzględniono również zmiany w uznawaniu i wykonywaniu „uprzywilejowanych" orzeczeń nakazujących powrót dziecka.

Słowa kluczowe: *wykonanie orzeczeń nakazujących powrót dziecka, uprowadzenie dziecka za granicę, Konwencja haska w sprawie uprowadzenia dziecka za granicę z 1980 r., jurysdykcja na mocy Rozporządzenia Bruksela II bis (wersja przekształcona), uprzywilejowane decyzje, Rozporządzenie Bruksela II bis 2019/1111 (wersja przekształcona)*

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