



THEMIS FINAL

Amsterdam 3-7 October 2011

PRACTICAL CASE

FRANZ BECKER is a German that works for an Italian multinational enterprise in Milan where he lives. There he met ROSA NEESKENS, a Dutch citizen that also worked for the same enterprise. They married in Rotterdam on 17 October, 2004 and lived in Milano where two children were born: ANDREA (born in Milan on 10 September, 2005) and ULRIKE (also born in Milan on 15 November, 2006).

Due to changes in the structure of the multinational enterprise FRANZ and ROSA worked in, both moved on 17 January, 2007 to the offices of the enterprise located in Brussels, establishing Belgium as their residence at that point. Due to differences between the couple, on 15 April, 2007 they decided to divorce, both agreeing on the divorce as well as on the following conditions:

* The custody of the children was to be kept by ROSA as FRANZ had relocated on 15 March 2007 to the offices of the enterprise located in Berlin; * Due to the distance between Brussels and Berlin, FRANZ was to visit and keep the children in Brussels with him every second weekend each month (from Friday until Sunday evening). FRANZ would maintain this arrangement, residing in a hotel during his periods in Brussels, up to the moment when ULRIKE would turn six years of age. At this point, the children would travel to visit the father in Berlin or any other EU city where he would be residing. (If in the case the father resided outside the EU, he would continue the former visitation arrangements of coming to Brussels to see the children.)

In addition to the above, the children would spend a month of each summer holiday with their father, half of the Christmas holidays in the city where the father would live and other holidays in Germany where a majority of the family relatives resided; two telephone conversations per week would be held between the father and children; * *FRANZ was to pay ROSA a monthly amount of 700 € as maintenance payments for the children (350 € for each child)*; * Overall compensation for the additional work that ROSA had done for the family while the couple was together was to be provided by transferring her a credit that FRANZ held against a debtor in Spain ("CONSTRUCTORA MANZANARES SA") with an address in Madrid – Puerta del Sol nº 3 – 28001, Madrid) – in relation to the lack of payment of 100.000,00 €, which should have been paid via a bank transfer for work FRANK did for an enterprise in Madrid in 2006. * Finally, the use of the apartment the couple had bought in Brussels (with a mortgage of 1.000 €/month) was granted to ULRIKE as she was to continue living there. The amount of the mortgage was to be covered by both, with a 2/3 part by ULRIKE and a 1/3 part by FRANZ.

In relation to this case, you are requested to answer the following questions:

1. Determination of the jurisdiction competent for the divorce.
2. Determination of the jurisdiction competent in relation to the maintenance payments of the children. In the case where the spouses reached an agreement by mediation, what are the procedures to follow if they need to subsequently enforce the agreement reached through mediation?
3. Determination of the jurisdiction in relation to parental responsibility and the visits to the children by FRANZ.
4. Determination of the jurisdiction competent in relation to the right of use of the apartment.
5. Determination of the law that could be applied to the divorce.
6. Determination of the law to be applied to the custody and visitation of the children.
7. Determination of the law to be applied in relation to the maintenance and right of use of the apartment.
8. Possible procedures for the enforcement, by ULRIKE, of any disruption of child maintenance payments (exceeding three months) by FRANZ.
9. Possible procedures that FRANZ could follow if he is not given access to the children by ULRIKE after being present in Brussels according to arrangements (for more than two consecutive months). In the case where ULRIKE moves to live with the children in Lille (France) for a new job and the competent Court considers the need to hear the children, how could this be done?
10. Possible procedures to follow by ULRIKE, if FRANZ takes (in one of the visits in summer 2011, for example) the children to Germany and keeps them with him, not bringing them back to Brussels. In which way has Regulation 2201/2003 contributed solutions of its own in the field of child abduction, which have reinforced the procedure set by the Hague Convention of 25 October, 1980?
11. Jurisdiction competent in a request for changes of the measures specified in the divorce procedure started by FRANZ on 10 September, 2010 in which the change request was to involve: * Custody of the children by FRANZ living in Berlin; * Due to the distance between Brussels and Berlin, ROSA was to visit and keep the children in Berlin with her on the second weekend every month (from Friday until Sunday evening) and there was to be one phone conversation per week; * ROSA was to pay FRANZ a monthly amount of 700 € as maintenance payments to the children (350 € for each child).

12. Procedure to follow if FRANZ requests in the change of measures procedure (submitted before Belgian Courts, after the German Courts refuse to handle the case by) that his parents (living in Munich) are heard as witnesses by the Court. In case the parents move to Zürich, which will be the procedure to follow? Finally, in case the Court considers the need to hear the witnesses directly, which could be the procedure to follow to let the witnesses know the day, time and conditions for appearing before that Court (both in the case where the parents live in Germany or in Switzerland)?
13. Procedure to follow if ROSA makes the same request in relation to hearing as witnesses her two sisters, one living in Denmark (Copenhagen) and the other in Portugal (Lisbon).
14. Procedure to follow for the changing of the measures in case FRANZ loses his job and, thus, considers himself entitled to legal aid.
15. Jurisdiction competent in relation to the request by ROSA against “CONSTRUCTORA MANZANARES SA” related to the credit it had with FRANZ in relation to work he did for this enterprise in Madrid in 2006.
16. Law to be applied in relation to this request by ROSA against “CONSTRUCTORA MANZANARES SA”.
17. In case that CONSTRUCTORA MANZANARES SA has the centre of its interests in Madrid, but also a subsidiary in Brussels, does the creditor (ROSA) have the possibility to request the opening of an insolvency procedure against this subsidiary or only the option to submit for the admission of her claim in the procedure opened in Madrid?

According to THEMIS rules, the paper containing your answers should not exceed 10 pages in MS-Word format, Times New Roman, size 12, line spacing 1.5 and it must be written in French or English.

All written references such as summaries, side comments, annexes, bibliography or endnotes shall be included in those 10 pages. One cover page may be added in addition to the 10-page limit.

Your answers should be grounded and concise.