

**Hubert Dudkiewicz, Katarzyna Duszyńska-Misarko, Małgorzata Jaskulska**  
**National School of Judiciary and Public Prosecution**  
**Poland**



**Kramer v. Kramer**  
**Legal and Practical Issues Concerning Civil**  
**Aspects of International Child Abduction**

A paper for THEMIS Competition Semi-Final B: International Judicial Cooperation in Civil Matters  
- European Family Law, 17-20 May 2016, Vilnius, Lithuania

## **Introduction to Kramer v. Kramer case**

Let us imagine a young, but not recently married couple with their six years old adorable son, Billy. They live in New York, leading an ordinary day-to-day life. The husband, Ted Kramer, is a well-known, successful advertising executive, devoting a little too much time to his work, submitting his blossoming career over family life. His wife Joanna begins to feel frustrated with her overworked beloved and at some point she decides to leave him, applying for the divorce. Therefore Joanna hits the road, leaving Ted in the lurch, to raise their son Billy by himself. Does the story ring the bell?

If the answer is yes, then probably You had a chance to see Robert Benton's hit entitled Kramer vs. Kramer. The movie portrays marriage breakdown and ensuing of vicious battle for their son custody. Both parties are prepared to win this fight at all costs, sometimes even at the child's expense. Even though the movie was made in the late 70s, its subject still remains substantial, perhaps even more than it was 40 years ago.

Hence, this movie plot inspired us to put across Kramer's personal conflict on the background of international family law regulation. We asked ourselves how would it look like today for the Kramer's family – in the times of global neighbourhood, in the era of unlimited travel's opportunities, when the world is down-scaling and European borders are open? Whether the raising mobility of citizens within the European Union and across the world would influence Kramer's case? What if the Kramers lived in the Member State and had different nationalities, and one day one of them decided to come back to homeland, taking their son without other's permission? What kind of repercussion could it induce? Are there any sufficient legal instruments for abandoned parent or maybe he is left to his fate? Finally, whether the created system of child's recovery is efficient, or does it require necessary changes?

For those and many more troubling questions we aim to provide answers. In our work we sought to identify and analyse the practical challenges that might occur while applying the Hague Convention on the Civil Aspects of International Child Abduction concluded 25 October 1980 (hereinafter also the Hague Convention or Convention) well as European Law, in particular the 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 (hereinafter the Regulation or Brussels II bis). We concentrated on the matter of international child abduction, identifying legal encumbrances that may come across for parties as well as for the judge in cases when one parent seeks to relocate child to another state or even part of the world. Therefore, by using the metaphor of Kramer's family and assuming different variants of their fortune and legal status, we attempt to present the different acts of legislation, that would apply. We hope that after having read our

work, these questions will not remain unanswered.

### **The scale of the phenomenon**

At the beginning, it is vital to determine whether child's abduction by one parent is a real problem, or is it a niche casus, that does not require special attention?

Statistical survey concerning a analysis of applications lodged under 1980 Hague Convention, conducted in 2008, by the Centre of International Family Law Studies at Cardiff University Law School in collaboration with the Permanent Bureau of the Hague Conference on Private International Law, showed that the scale of this phenomenon is increasing<sup>1</sup>. Of course it must be considered that with each year the number of Convention's signatories is rising, which has a way obvious influence on the amount of lodged applications. Nevertheless, the collected data prove that this is a precedent of the constant nature.

According to the survey, in 2008 there was 2,321 incoming applications, comprising 1,961 return and 360 access applications. Compared with the 2003, there has been a 45% increase in return applications. What might be also interesting is the fact that 69% of taking persons were mothers, a figure that has stayed almost constant - 68% in 2003 and 69% in 1999. What is more, in 2008, 28% of the taking persons were fathers and the remaining 3% comprised grandparents, other relatives, or institutions. Furthermore, out of a global total of 1,961 return applications, 985 were received by Brussels II<sup>2</sup>.

Drawing conclusions from the data presented in our thesis is that although the problem of child abduction does not have a mass character, it is a real problem that the legislation is still trying to deal with.

### **Brief of international regulations that strive to solve the problem**

We live in times of dynamic international cooperation in civil matters, not only in Europe, but all across the world. In consequence, more and more spheres of our private life are subjected to the legal regulations and a considerable number of international legal instruments aim to deal with problems concerning the breakdown of the family life such as divorce and separation, children custody, parental responsibility, alimony obligations, and many others, involving cross-border connections. In case of the particular problem of the child abduction, the most significant international legal regulation is already mentioned in Hague Convention on the Civil Aspects of International Child Abduction. This intergovernmental agreement, which was a meaningful step in the international system of children's rights protection, was signed 25 October 1980, by the members of Hague Conference on Private International

---

<sup>1</sup> Nigel Lowe, *A Statistical Analysis Of Applications Made In 2008 Under The Hague Convention Of 25 October 1980 On The Civil Aspects Of International Child Abduction, Part I – Global Report, November 2011*, <https://assets.hcch.net/upload/wop/abduct2011pd08ae.pdf> (access: 15.04.2016).

<sup>2</sup> Ibid.

Law (HCPIL). Its object was to create a complex and efficient instrument to counteract the phenomenon of the international abduction of children by one of its parents (preamble, article 1 point a). It entered into force three years later and governed matters concerning abduction or wrongful removal of children across the borders<sup>3</sup>.

One of the legal systems, which prevails over the regulation of the 1980 Hague Convention, was created and developed by the European Union. It must be bore in mind that one of the EU's objects is to provide a unitary regime of judicial cooperation in civil and commercial matters within the Member States. Moreover, one of the side effects of the open borders is a freedom of travel, which significantly facilitates the wrongful removal of the child. To counteract this phenomenon European Union established more developed, complex and efficient regulating which complies and clarifies the provisions of the Hague Convention. It was intended to provide solutions to the loopholes and faults, which resulted in different standards of implementation and protection among the countries, that have been already experienced in the process of applying the Convention. The purpose of the new legislation was also to ensure automatic recognition and direct enforcement of judgments within the Union, without any intermediate proceedings or grounds for refusal of enforcement<sup>4</sup>.

On 1st March 2005 came into force Brussels II bis Regulation, which applies to the abduction cases. It emphasized the need of automatic enforcement of the child return and narrowed the possibility of court's refusal, introducing a special procedure in that event. What is more, a positive judgment of the return was to be directly enforceable in the Member states, without the *exequatur* procedure<sup>6</sup>. Nevertheless, introducing European Union legal regime did not mean that 1980 Hague Convention was no longer applicable. The truth is that Brussels II bis Regulation prevails over Convention's provisions, nevertheless the Convention continues to apply, not in original form, but elaborated and supplemented by new Brussels II bis. What is more, in relation to the national law of the Member States of EU, it takes precedent over domestic provisions, and is directly applicable, without any need of implementing statutes<sup>7</sup>.

### **He/She took my child, now what?**

Returning to our initial plot of the Kramer's family, basing on the different assumptions of their story, we would sought to briefly introduce how does the procedure of the return of the child look like under the provisions of Hague Convention and the Regulation Brussels II bis. This brief description will

---

<sup>3</sup> Hague Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law ([www.hcch.net](http://www.hcch.net)), under "Conventions" or under the "Child Abduction Section".

<sup>4</sup> Katarina Trimmings, *Child Abduction within the European Union*, Studies in Private International Law, Oxford 2013, p.1837-1838.

<sup>6</sup> *Ibid.*, p.1845-1846.

<sup>7</sup> European Commission, *Practice Guide for the application of the new Brussels II Regulation*, 2005, [http://ec.europa.eu/civiljustice/publications/docs/guide\\_new\\_brussels\\_ii\\_en.pdf](http://ec.europa.eu/civiljustice/publications/docs/guide_new_brussels_ii_en.pdf) (access: 15.04.2016).

allow us to highlight possible arising practical and legal problems and analyse them in further part of our work.

Thus, let us assume that the Kramers are residents of the United State of America. As a result of their fierce quarrel, Joanna decides she can no longer stand her husband. Therefore, secretly, without Ted's knowledge or consent, she takes Billy to Lithuania, where she has a very rich aunt eager to host her (as aunty has always knew that Ted was nothing but trouble). What Mr. Kramer should do in such situation?

Bearing in mind that the USA is not a signatory to the European Regulations, the procedure for the recovery of Billy shall be entirely based on the provisions of the Hague Convention, even though the child was abducted within the territory of one of the Member States. Nevertheless, Billy was taken to the state which acceded to the Hague Convention, therefore Mr. Kramer is able to recover him, following Convention's provisions.

Firstly, he should turn to the so-called Central Authority, which will instruct Ted and intercede in his case. Usually it is the Ministry of Justice, but the application can also be submitted to the Police Station or in the family court, and from there it shall be directly transferred to the proper authority. The application must contain substantial information such as the identity of the applicant, of the child and of the person alleged to have removed or retained the child, the date of birth of the child, the grounds on which the applicant's claim for return of the child is based, as well as all the available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be. The sample of such request is usually accessible on the Ministry of Justice web site. All the documents, together with the application, should be translated into the official language of the state which the child was relocated to.

Fortunately for Mr Kramer the Hague Convention is based on assumption that the immediate return of the child is always in its best interest and stipulates the general rule of child's return, with only few exceptions that will be explored later.

And how would this procedure would look like if Billy was abducted from Lithuania to Poland – both Member States of the European Union?

As it was mentioned above, the Hague Convention, which has been ratified by all Member States, applies in the relations between them. However, it is supplemented by certain provisions of the Regulation Brussels II bis, which prevail over this international agreement<sup>5</sup>. As a general rule, the procedure of applying Regulation in based on the provisions of the Convention, with a few exception. Nevertheless in our work we aim to focused on the European Regulations, hence this matter will be pursued further.

Thanks to those changes, the procedure of child's return has become more efficient, but there are still considerable doubts surrounding its application, which we endeavour to clarify in our work.

---

<sup>5</sup> Ibid.

Consequently we would like to analyse the chosen practical and legal issues that may occur while proceedings under Brussels II bis provisions, both for the parties, and the judge.

### **Habitual residence of a child**

The first problem, which a judge may face in the Kramer's case is determination of Billy's habitual residence. The term "habitual residence" supplanted the previously used in private international law, traditional terms of nationality and domicile, which were considered to be problematic due to the fact that several states might have concurrent authority in some matters, generating conflict of laws problems<sup>6</sup>. Since then the term has been widely used in many acts of international private law, inter alia the regulations of the European Union<sup>7</sup>.

Habitual residence is also one of the most important terms used in the provisions of the Hague Convention on the Civil Aspects of International Child Abduction and the Brussels II *bis* Regulation. It does not only determine the jurisdiction in the child abduction cases, being one of its premises, established in the articles 8 – 10 of the Regulation, but it is also an element of the definition of wrongful removal or retention of a child according to the article 2 (11) of the Regulation and article 3 of the Convention. Hence, one cannot decide if the removal or retention of a child was wrongful nor can establish the competent jurisdiction in its case without prior determination of the state of its habitual residence. The concept of habitual residence is therefore the most important threshold determination in child abduction proceedings<sup>8</sup>.

Habitual residence, yet so crucial, does not have any legal definition in the sources of international private law. Although the idea of habitual residence in the Convention, as well as in the Regulation, is intentionally undefined, created as factual concept designed to accommodate the diversity of legal systems<sup>9</sup> and to allow the national courts to interpret the provisions of the Convention at ease<sup>10</sup>, it makes determination of habitual residence of a child a subject of many legal and practical problems in cases of child abduction.

The meaning of the term, according to the Practice Guide for the application of the new Brussels

---

<sup>6</sup> Ann Laquer Estin, *Where (in the World) do Children Belong?*, "BYU Journal of Public Law", 2011, Vol. 25 Issue 2, p 220.

<sup>7</sup> Leszek Kuziak, *Urowadzenie dziecka za granicę*, [in:] Jacek Ignaczewski (ed.), *Wladza rodzicielska i kontakty z dzieckiem – Komentarz*, Warszawa 2012, p. 370.

<sup>8</sup> Tai Vivatvaraphol, *Back to Basics: Determining a Child's Habitual Residence in International Child Abduction Cases Under the Hague Convention*, "Fordham Law Review", May 2009, Vol. 77 Issue 6, p. 3327.

<sup>9</sup> *Report on the Fifth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Practical Implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (30 October – 9 November 2006)*, Permanent Bureau, Hague Conference on Private International Law, The Hague 2007, p. 44.

<sup>10</sup> L. Kuziak, *op.cit.*, p. 371.

II Regulation, should be determined by the judge in each case on the basis of factual elements, in accordance with the objectives and purposes of the Regulation<sup>11</sup>. Hence, habitual residence is above all a question of fact to be decided on a case-by-case basis<sup>12</sup>, with no reference to any technicalities that have surrounded concepts like “domicile” and “nationality”<sup>13</sup>, which makes the national courts free to interpret the meaning of the term in every single case, however it should be always done in a way that maximize the achievement of the objectives of the Regulation. The problem arises when two courts, one in the state from which the child was abducted, and the second in the state to which the child was abducted, define its habitual residence differentially, assuming that each of them is exclusively competent in its case.

Let us imagine that in our case Mrs. and Mr. Kramer came from the U.S. first to Poland together with their child. They wanted to find a job in Warsaw, but after one year they decided to move to Lithuania, where Mr. Kramer found better opportunities for his career. Mrs. Kramer is starting to think about divorce because of her husband’s workaholism, but Ted does not want to hear about it, claiming that it is just a worse period in their marriage. After seven months, when Billy already attended Lithuanian school, Mrs. Kramer moves back to Poland, where she had a better job, and brings her son along. She also files an application for a sole custody with a Polish court. Subsequently, Ted files an application for Billy’s return with the Lithuanian court. Which court is competent to decide in the case of the sole custody, and which state has jurisdiction in the child’s return case? Was Mrs. Kramers’ act or was not a wrongful removal? Answers depend on determination of Billy’s habitual residence.

According to the article 10 of the Regulation “in case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State” and has met some other strictly defined conditions. This provision protects the left-behind parents and their children against the possibility of the jurisdiction change on the basis of unlawful act of the second parent<sup>14</sup>. Therefore, the court of the state of Billy’s habitual residence will be competent if one of the parents kidnaps him and decides to file an application for a sole custody, as well as in the case of Billy’s return to the left-behind parent. In fact, in the later case, courts of both states: according to the provisions of the Regulation - the one of Billy’s habitual residence and, according to the provisions of the Hague Convention - the one to which he has been abducted, shall be considered as competent<sup>15</sup>. But which state: Poland, Lithuania or maybe even U.S. were the place of habitual residence of Kramers’ child? What

---

<sup>11</sup> European Commission, *Practice Guide for the application ...*, op.cit., p. 12.

<sup>12</sup> *Report on the Fifth Meeting ...*, op.cit., p. 45.

<sup>13</sup> A.L. Estin, op.cit., p. 222.

<sup>14</sup> Jolanta Zatorska, *Komentarz do rozporządzenia nr 2201/2003 dotyczącego jurysdykcji oraz uznawania i wykonywania orzeczeń w sprawach małżeńskich oraz w sprawach dotyczących odpowiedzialności rodzicielskiej*, LEX/el., 2010.

<sup>15</sup> Marcin Radwan, *Wybrane zagadnienia postępowania wywołanego przez bezprawne uprowadzenie lub zatrzymanie dziecka w innym państwie członkowskim*, „Europejski Przegląd Sądowy”, 2011, No. 2, pp. 11 – 20.

if courts in both European states declare themselves competent to solve this matter, assuming that correspondingly, Lithuania or Poland were the states of Billy's habitual residence? It would take months, lot of expense and paperwork to determine the competent court, and according to the Review of the Implementation of Brussels II *bis* Regulation in Relation to Parental Abduction of Children, cases in which more than one court claims its competence are not so uncommon<sup>16</sup>.

However, the freedom of habitual residence interpretation is not unlimited. First of all, the meaning of the term cannot stem from its interpretation in national legal system, being an autonomous concept of private international law. In other case, the free movement of judgments would be hindered as some Member States might have too broad or too narrow definitions in their national law<sup>17</sup>. Secondly, as the European Court of Justice stated, general and abstract rule defining the concept of habitual residence used in other international legal acts "cannot be directly transposed in the context of the assessment of the habitual residence of children"<sup>18</sup>, because of the specific aim of the child abduction regulations, which is to protect the best interest of the child. Therefore, the term contained in the Convention and in the Regulation must be interpreted autonomously even in relation to its other meanings in international law, and always shaped in the light of the best interest of the child<sup>19</sup>. Moreover, as it must fulfil requirements of the principle of legal certainty, the term cannot be interpreted without reference to its meaning established in other cases of child abduction, both settled under the Convention, and the Regulation, which have the same objectives and require uniformity in their application. That is why the court interpreting habitual residence in its own case cannot do it without reference to the existing case law.

Taking into account the guidance of the Hague Conference on Private International Law and determining the meaning of the concept on the basis of factual findings, a judge should first look at the duration and regularity of the stay of a child on the territory of a particular state. However, a mere finding that a child has spent in one place a top-down established period of time is not sufficient to determine its habitual residence. What is more, as the Convention and Regulation do not lay down any minimum duration of stay, its time may be only an indicator in the assessment of the permanence of residence<sup>20</sup>. As the U.S. Court of Appeals for the Sixth Circuit noted in *Robert v. Tesson* case, "a child's habitual residence is the place where he or she has been physically present for an amount of time sufficient for

---

<sup>16</sup> *Review of the Implementation of Brussels II Regulation in Relation to Parental Abduction of Children*, Freshfields Bruckhaus Deringer and the European Citizen Action Service (ECAS), Brussels 2006, pp. 6 – 8, [http://www.jugendamt-wesel.com/PRESSE\\_POLITIQUE/ChildAbduction-NotetoCommissionerFrattini2.pdf](http://www.jugendamt-wesel.com/PRESSE_POLITIQUE/ChildAbduction-NotetoCommissionerFrattini2.pdf) (access: 15.04.2016).

<sup>17</sup> Koen Lenaerts, *The Best Interest of the Child Always Come First: The Brussels II bis Regulation and the European Court of Justice*, "Jurisprudencija", 2013, Vol. 20, Issue 4, p. 1306.

<sup>18</sup> European Court of Justice, *Judgment of the Court (Third Chamber)*, Case C-523/07, 2 April 2009, para. 36.

<sup>19</sup> K. Lenaerts, op.cit.

<sup>20</sup> *Ibid.*, p. 1307.



acclimatization and which has a ‘degree of settled purpose’ from the child’s perspective”<sup>21</sup>. Hence, beside the period of time, it is necessary to establish all the circumstances that can be objectively observed to show child’s permanent attachment to one country over another, including the child’s existing social ties like its acclimatization to the surrounding environment, and the degree of settled purpose of his stay<sup>22</sup>.

The factors that should be taken into account in establishing the facts about child’s acclimatization are all circumstances that reflect some degree of integration by the child in a social and family environment, like among others: the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in the place of its stay<sup>23</sup>. For example, the U.S. District Court for the District of Minnesota in *Sorenson v. Sorenson* case relied its findings about the Sorensens’ daughter integration in Australia on the fact that the girl had enrolled in preschool there, spoke with Australian accent, had Australian friends, and spent the majority of her life in Australia<sup>24</sup>. Consideration of the acclimatization factors in the context of habitual residence determination seems especially justified, taking into account the purpose of the Convention and Regulation to protect the best interest of the child, who, according to the provisions of the Convention on the Rights of the Child, even if separated from its parents, should not be torn out from its ethnic, religious cultural or linguistic background<sup>25</sup>. The older child is, and more social relations it has, the easier to establish the conditions as described above.

Billy’s acclimatization to his environment in Lithuania or Poland should be therefore evaluated on the basis of his relations with other children from his place of living, his ability to understand and attempts to speak Lithuanian and Polish and the level of his cultural integration in both states. The fact that he has spent more time in Poland, than in Lithuania, does not mean that he must be more acclimatized to the conditions in the country of his mother’s choice. A judge must have in his or her mind that the degree of child’s integration with the environment depends not only on the period of time spent in it, but also on other factors like the age of the child, the intensity of social relations and the quality of the environment from the child’s point of view. Billy can find Vilnius far more attractive than Warsaw, may like his Lithuanian friends more than kids from the Polish school and because he was older, living in Lithuania, than in Poland, he could be more active in social relations with his surroundings.

However, the degree of acclimatization is not enough to determine the state of habitual residence of a child. Billy could go to another country for two months of vacation, and just because he felt there better than home, met a lot of new friends, and attempted to speak local language, we cannot assume that it was his place of habitual residence. For this reason courts should not only analyse the fact of child’s

---

<sup>21</sup> United States Court of Appeals for the Sixth Circuit, *Robert v. Tesson*, 507 F.3d 981 (2007), INCADAT HC/E/USf 935, p. 7

<sup>22</sup> T. Vivatvaraphol, op. cit., p. 3359.

<sup>23</sup> European Court of Justice, op. cit., para. 38 – 44.

<sup>24</sup> T. Vivatvaraphol, op. cit., p. 3327.

<sup>25</sup> *Convention on the Rights of the Child*, 20 November 1989, article 20(3).

acclimatization to the place of its stay, but also the degree of settled purpose of his residence.

The settled purpose is not clearly defined in the case law. As it was described by the U.S. Court of Appeals for the Third Circuit in *Feder v. Evans-Feder* case, the purpose may be general or specific, it may be one or there may be several, but what is important the purpose of living where one does, must be of a “sufficient degree of continuity to be properly described as settled”<sup>26</sup>. Because a child is too young to decide by itself about the place of its living and its purpose, courts very often combine the concept of settled purpose with shared parental intent, in some cases even requiring the proof of parents’ abandonment of the old habitual residence of the child for its existence in a new place. The most significant case, where a shared parental intent was taken into consideration, was *Moses v. Moses*, in which the U.S. Court of Appeals for the Ninth Circuit admitted that the most straightforward way to determine someone’s habitual residence would be to observe his behaviour, but stated that a simple observation could yield different results based on the observer’s time frame, leading to misjudgements. That is why in the Court’s opinion, close attention must be paid to subjective intent of parents<sup>27</sup>. Family Court at Melbourne in *Cooper v. Casey* case noted that “habitual residence is a term referring, when it is applied in the context of married parents living together, to their abode in a particular place or country which they have adopted voluntarily and for settled purposes as part of the regular order of their life for the time being whether it is of short or of long duration”, expressing the opinion, that child’s habitual residence is the same as that of its parents and cannot be changed unilaterally by neither of them<sup>28</sup>. However, this way of thinking leads to transformation of evidence of settled purpose into an evidence akin to showing of domicile, which was definitely excluded from the habitual residence concept that refers only “to a factual situation that implies stability and permanence and alludes to the center of the minor’s life”<sup>29</sup>. It causes also many difficulties, as noted the Ninth Circuit itself, in the in-between cases, where one parent consented to let a child stay abroad for an indefinite period of time, but suddenly wants it back<sup>30</sup>. It would be our case if Ted let Joanna take their son to Warsaw for some time, even enough for Billy to acclimatize in Poland again. The court could conclude that later Billy’s retention by Mrs. Kramer was wrongful because of lack of his parents’ shared intent in his permanent stay in Poland. The same effect could have Joanna’s statement about her lack of consent to move from Poland on permanent basis. The court could decide that in fact the removal of the family to Lithuania was not the shared intent of both Kramers, the seven-months-stay in Vilnius was not decisive in the matter of Billy’s habitual residence, however he could be already fully acclimatized there,

---

<sup>26</sup> United States Court of Appeals for the Third Circuit, *Feder v. Evans-Feder*, 63 F.3d 217 (3d Cir. 1995), INCADAT HC/E/USf 83.

<sup>27</sup> United States Court of Appeals for the Ninth Circuit, *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001), INCADAT HC/E/USf 301.

<sup>28</sup> Full Court of the Family Court at Melbourne, *Cooper v. Casey*, (1995) FLC 92-575, INCADAT HC/E/AU 104.

<sup>29</sup> T. Vivatvaraphol, op. cit., p. 3358.

<sup>30</sup> United States Court of Appeals for the Ninth Circuit, *Mozes v. Mozes*, op.cit.

and that Ted must let him go back to Poland with his mother. This assumption would be totally contradictory to the goals of the Convention and Regulation, preventing the child from being taken out of the family and social environment in which its life has developed<sup>31</sup>. Such overestimation of shared intent can lead to ridiculous verdicts, as in *Redmond v. Redmond* case, in which, despite the fact that the son of the parties has lived in the United States for three years from the eighth month of his life, the district court focused on the parents' initial agreement to raise him in Ireland, and decided that he should have gone there back after being wrongfully retained by his mother. Fortunately, the verdict was changed by the court of appeal, because otherwise it would have only harmed the child, who had been already settled in the U.S. environment<sup>32</sup>. That is why in our opinion, the notion of shared intent of parents should be considered only as a subsidiary premise of habitual residence for the cases in which one cannot determine it on the basis of simple facts, for example if the child is an infant, who is not socially conscious.

As the Polish Supreme Court stated in the case *I CKN 766/00*, habitual residence must be understood as a long-term, stable and continuous stay in the place where focuses the life activity of a child and where the child satisfy all its needs, but without any reference to the intents of its parents<sup>33</sup>. In our opinion only this understanding of the settled purpose concept may be consistent with autonomous meaning of child's habitual residence, which should not be confused with habitual residence of its parents, who indeed decide about the child's place of living but cannot decide about other factors which must be taken into account, like e.g. the degree of its acclimatization, which is largely dependent on the child's will. That is why the meaning of settled purpose from the child's perspective should be based on the objective facts not subjective factors. Hence, only a place that is the centre of the child's life, in which it usually spends most of its time, which may be considered as a place of its permanent stay, and which the child is acclimatized to, can be its habitual residence.

It is crucial to interpret one of the most important terms used in the Hague Convention and Brussels II *bis* Regulation coherently in all cases of child abduction, bearing in mind that every interpretation must be also consistent with the goals of those acts, which is in the first place to protect the best interest of the child, not the interest of its parents. That is why, in our opinion, the meaning of habitual residence of a child should be based on the objective factual findings without reference to the subjective notion of shared parental intent that should be taken into account only if one cannot determine the centre of child's life on the basis of facts.

---

<sup>31</sup> United States Court of Appeals for the Sixth Circuit, *Robert v. Tesson*, op. cit., p. 9.

<sup>32</sup> See more: Melissa Torto, *International Family Law – Habitual Residence, Changing Custody Rights, and Wrongful Retention and Removal under the Hague Convention on Civil Aspects of International Child Abduction – Redmond v. Redmond*, 724 F.3d 729 (7<sup>th</sup> Cir. 2013), “Suffolk Transnational Law Review”, Winter 2014, Vol. 37 Issue 1, pp. 235 – 248.

<sup>33</sup> Polish Supreme Court, *the Decision of 26 September 2000*, case no. I CKN 776/00, published in: *Orzecznictwo Sądu Najwyższego Izba Cywilna 2001/3/38*.

## Billy's return or non-return?

### Wrongful removal or retention

Returning to the subject at hand, Joanna took her son from Kramer's Lithuanian home to Warsaw without Ted's consent and now they are separated. Billy is gone and Mr. Kramer is desperate to get him back. He is angry at his wife. However she is still Billy's mother, so the question is: could she do it? Was it within her parental rights? In other words, we have to establish, whether Mrs. Kramer behaviour can be established as 'wrongful removal or retention' of Billy.

When parents live together they usually exercise parental rights over their children jointly. In our case: Mr. Kramer and Mrs. Kramer used to bring up Billy together. However, in case of separation or divorce, parents must decide, by mutual agreement or by going to court, how they will exercise their responsibility in the future. Ted and Joanna did not agree on anything.

Thus, the judge shall first determine whether a “wrongful removal or retention” has taken place in the sense of the Regulation No 2201/2003. Only then Mr. Kramer can successfully demand from Polish court to decide that Bill shall return to Lithuania. The definition in article 2 paragraph 11 under the Regulation is very similar to the definition of the Hague Convention (article 3) and covers a removal or retention of a child in breach of custody rights under the law of the Member State where the child was habitually resident before the abduction. However, the Regulation adds that custody is to be considered to be exercised jointly when one of the holders of parental responsibility cannot decide on the child’s place of residence without the consent of the other holder of parental responsibility. As a result, a removal of a child from one Member State to another without the consent of the relevant person constitutes child abduction under the Regulation<sup>34</sup>. The need to recognise such a situation as “*wrongful removal or retention*” seems to be obvious. It is why, in our opinion, legal definition of this term under the Regulation is more accurate than the one of the Hague Convention<sup>35</sup>. In consequence, Mrs. Kramer should have informed her husband about the place where Billy lives each time she decides to change it, even though she would have the right to determine the residence of the child.

Cases in which a single parent holds all the prerogatives relating to the child hardly pose any

---

<sup>34</sup> See more: European Commission, *Practice Guide for the application...*, op. cit., p. 40.

<sup>35</sup> Under Hague Convention the removal of a child to another Member State without informing the left-behind parent in this situation has not been regarded a wrongful removal. See for example German-Austrian Pomorski case, in which the parents had joint custody. Both, German and Austrian courts have regarded the removal of the child without informing the left-behind parent about its whereabouts as a legal act and not a wrongful removal, arguing that the removing parent (in this case, the mother) had the right to determine the residence of the child and, therefore, could move with the child without leaving an address for the father to visit his child. In our opinion court's decision does not appear to be in line with the right of the child to have access to both parents. This right is not only explicitly mentioned in article 24 par. 3 of the EU Charter of Fundamental Rights, but has also been recognized in various judgments by the European Court of Human Rights (*ECHR*) in Strasbourg. See also: *Review of the Implementation of Brussels II Regulation...*, op.cit., p. 5-6.

difficulties. There will have been an unlawful removal or detention of the child when the other parent prevents the entitled parent from exercising those prerogatives. The same holds true for joint custody. If one of the entitled parents ignores the rights of the other and prevents the normal exercise thereof, such as by unilaterally establishing a new place of residence with child, that behaviour will qualify as an unlawful removal or detention and will warrant legal action under the Convention<sup>36</sup>. It means that Joanna has an obligation to respect her husband's parental rights, even if they had separated.

That said, parents should always cooperate when making decisions concerning where the child shall reside, unless one parent has been completely deprived of parental authority.

### **Grounds for return of the Child**

To hear the request, the court must verify the fulfilment of two conditions:

First, it must find a *prima facie* showing that the child was in fact abducted or unlawfully detained within the meaning of article 2 paragraph 11, defined above. At this point, we have no doubt that in our example, Billy has been abducted by his mother Mrs. Kramer in the sense of the Regulation No 2201/2003. She took him away from Lithuania neither without Ted's consent nor without even his knowledge about Billy's whereabouts.

Second, it must verify that the request was made within the requisite time period established by article 12 paragraph 1 of Hague Convention. In effect, the child recovery request can be heard only where a period of less than one year has elapsed between the abduction or detention of the child the request brought before the judicial and administrative authority of the contracting state where the child is located. However, even where the concerned authority is seized with a request after the lapse of one year, it can refuse to honour the request only upon a showing that the child in question has integrated into his new surroundings (article 12, paragraph 2). Let us assume that in our example case, Ted made the request immediately after he had discovered the disappearance of Billy.

Where the above conditions are met, the state authorities where the child is located orders the immediate return of the child except where one of the Convention's exceptions applies<sup>37</sup>. In other words, as the rule, the judge shall order the immediate return of Billy to his father Mr. Kramer from Poland to Lithuania, because, as we established, the above conditions have been met. However, there are exceptions to this rule. Moreover, there is even an exception to the exception, which are presented below.

---

<sup>36</sup> See: Institut suisse de droit comparé (ISDC), *The parental responsibility, child custody and visitation rights in cross-border separations*, Lausanne 2010, p. 63, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425615/IPOL-PETI\\_ET\(2010\)425615\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425615/IPOL-PETI_ET(2010)425615_EN.pdf) (access: 15.04.2016).

<sup>37</sup> *Ibid.*, p. 66.

## Grounds for Non-return of the Child

The Convention recognises that the removal of the child may sometimes be objectively justified for reasons relating to the child's physical person, or to his immediate environment. In the limited circumstances enumerated by the Convention, more fundamental interests can outweigh the interest of the child not to be removed from his place of habitual residence (articles 13 and 20 of Convention).

The first possible exception to a duty to return the child has to do with the ineffective nature of the custody (article 13 letter a) *in principio* of Convention). The interested party must show that at the time of the child's removal or detention, the person, institution, or organization charged with caring for the child's physical person did not in fact exercise an effective right of custody. This exception can be very problematic, because there are doubts whether the judge should only check, if an effective right of custody was indeed exercised in the legal sense or whether the authority concerned should rather additionally verify the quality of exercising those rights? For example, let us imagine that Ted was a bad father, who, indeed, had contact with Billy, helped his wife Joanna bringing him up, thus, the judge established that Mr Kramer definitely exercised an effective right of custody. However, he did not exercise his right properly, meaning he had bad impact on Billy, was drunk during taking care of him etc. Should it influence judge's decision in determining whether Mr. Kramer exercised an effective right of custody? In our opinion it should not. This is an exception, consequently this provision must not be interpreted extensively. According to article 13 letter a) of Convention, the judge should only verify if parent did not in fact exercise an effective right of custody. The quality of exercising those rights is entirely different matter. In addition, above circumstances such as Mr. Kramer's alcoholism or bad impact on Billy may and should be taken into consideration under next- third exception regulated in article 3 letter b) of Convention.

The second exception justifying the refusal the child's immediate return refers to the consent or the acquiescence of the guardian subsequent to the child's removal or detention (article 13 letter a) *in fine* of Convention). This exception is in our opinion rather clear: Ted's contest would have made no illegality of Joanna's act.

The third justification for not returning the child is the existence of a grave risk that child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation (article 13 letter b) *in fine* of Convention). In the jurisprudence there are usually presented following reasons that justify the refusal of child's return: the applicant's alcohol and drug addictions, danger of breaking the emotional bond between the child and the person, who abducted the child, applicant's mental illness or sexual abuse of child by the left-behind parent<sup>38</sup>. This exception is the most

---

<sup>38</sup> Jacek Ignaczewski, *Komentarz do Konwencji dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę, sporządzonej w Hadze dnia 25 października 1980 roku*, Legalis/el., the commentary to article 13.

difficult to establish, because the judge often does not have enough means to verify whether there is in fact the grave risk of danger to the child, especially considering that Ted is still in Lithuania and the judge rules in Poland. In consequence, the question which needs to be asked is: whether the proceedings to take evidence *in sensu stricto*, which usually involves the examination of witnesses and opinions by experts are always necessary? On the one hand, it is very important to verify above condition carefully, but on the other hand, it should be stressed that the court shall issue a decision within a six-week deadline (article 11 of Convention and article 11 paragraph 3 in fine of Regulation)<sup>39</sup>, what seems to be in contradiction with each other, because the precise bringing of evidence is always time-consuming. Difficulties with the delay were highlighted by a study prepared for Hague Conference on Private International Law (HCCH), which shows that only 15% of the applications between Member States were actually resolved within the six week time limit. In fact the average number of days taken to resolve a return application in 2008 was 165, but as noted by the study, the time taken varied considerably depending on the outcome of the case. Finally, there have been cases where delays in the return procedure have led to a refusal of return. After long proceedings it is sometimes argued that the child has acquired habitual residence in the country where he/she has been abducted to and that it would be against his/her best interests to return to the State of origin at that point<sup>40</sup>.

The child's refusal to return to his place of habitual residence and to his guardian can constitute the fourth valid reason for not return the child where the child has reached a level of maturity justifying the consideration of his own opinion. This exception is also very difficult to establish without the proceedings to take evidence. Let us imagine that 6-year Billy consequently says that he wants to stay with his Mum and that he does not want to return to Lithuania to his Dad. Should the Polish judge take his opinion under consideration? And if so, how should the judge verify whether Billy has reached the certain level of maturity? It may help that the Regulation reinforces the right of the child to be heard during the procedure. Hence, the court shall give the child the opportunity to be heard unless the judge considers it inappropriate due to the child's age and degree of maturity (article 11 paragraph 2 of Regulation). It means that, the judge would have always had an opportunity to face the child and therefore establish if there is a further need to call the expert.

Some courts take the view that bringing of evidence should indeed be very precise, including even the opinions by experts<sup>41</sup>. It should be reiterated that, on the one hand, it is positive, but on the other hand,

---

<sup>39</sup> There are people who criticize the time limit for not being realistic (i.e. too short) or that there are no consequences in the event it is not kept. European Commission, *Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendment, Final Report, Analytical annexes*, May 2015, p. 79-80, [http://ec.europa.eu/justice/civil/files/bxl\\_iaa\\_final\\_report\\_analytical\\_annexes.pdf](http://ec.europa.eu/justice/civil/files/bxl_iaa_final_report_analytical_annexes.pdf) (access: 15.04.2016).

<sup>40</sup> European Commission, *Practice Guide for the application...*, op.cit., p. 41.

<sup>41</sup> See for example, one important case presenting this view, which was decided by the Polish Supreme Court under Hague

it makes impossible to rule within six-week deadline and in consequence prevents the prompt return of child. However, the cases concerning the welfare of the child are of such significant importance, that judge's wish to establish the existence of above exceptions precisely is understandable. It is not a case, where the parties argue over the money. In child's abduction cases, the parents like Ted and Joanna fight for their child and the emotions often obscure the legal aspects. The judge must determine the child's future place to live, which would have an enormous impact on child's life. The best interest of the child shall always prevail against the formal rules such as the rapidity of the procedure. That is what matters to us, nothing more or nothing less. In addition, six-week deadline applies except where impossible due to exceptional circumstances (article 11 paragraph 3 *in fine* of Regulation 2201/2003). In our opinion, verifying whether the exceptions to prompt child's return exist may in some cases constitute "exceptional circumstances". Therefore, if the facts of case show that Ted had in past been violent, had abused alcohol or drugs or there had been some other aspects that can put Billy in danger after his return, the judge should verify given situation precisely, even if it means calling the experts or witnesses. The same applies when Billy refuses to come back to Mr. Kramer. The judge shall establish whether Billy has reached the certain level of maturity that allows him to sensibly formulate his own opinion. It has to be stressed that the judge has to verify carefully whether Billy's opinion is indeed "his own" and not manipulated by his mother Joanna, who obviously has an interest to convince her son to tell the judge that he does not want to leave Poland and come to Lithuania to his father.

A final circumstance permitting a judge to circumvent the immediate return of the child pertains to public policy. In effect, article 20 of the Hague Convention allows for refusal to return the child in the event of an incompatibility between returning the child and fundamental human rights or liberties of the seized state<sup>42</sup>. Among Member States of European Union this rule hardly ever applies, because of common human rights and fundamental liberties.

The current tendency is to allow for these presented above exceptions only in exceptional cases. The refusal to order the immediate return of the child for reasons other than those expressly set out is incompatible with the language of the Convention. The parent opposing the child's return (so in our case example Joanna) bears the burden of proving the exceptional circumstances, which must have existed at the moment of the child's removal or detention abroad<sup>43</sup>.

---

Convention, the judgment of 16 January 1998 (case no. II CKN 855/1997, published in: *Orzecznictwo Sądu Najwyższego – Izba Cywilna*, 1998/9/142).

<sup>42</sup> See: Institut suisse de droit comparé (ISDC), *op.cit.*, p. 67.

<sup>43</sup> See: *Ibid.*



### **‘Adequate arrangements’ as the exception to the exception**

It should be noted that there is a very important exception regulated in the Regulation 2201/2003 to the one exception regulated in the Convention presented above. The Regulation reinforces the principle that the court shall order the immediate return of the child by restricting the exceptions of article 13 letter b) of the 1980 Hague Convention to a strict minimum. Thus, the judge cannot refuse the return request invoking article 13 letter b) if it is established that adequate arrangements have been made to secure the protection of the child after his or her return (article 11 paragraph 4 of Regulation). In other words, the court shall always order the return of the child if he or she can be protected in the Member State of origin<sup>44</sup>. We have to remind that article 13 letter b) of the Hague Convention stipulates that the court is not obliged to order the return if it would expose the child to physical or psychological harm or put him/her in an intolerable situation. The Regulation goes a step further by extending the obligation to order the return of the child to cases where a return could expose the child to such harm, but it is nevertheless established that the authorities in the Member State of origin have made or are prepared to make adequate arrangements to secure the protection of the child after the return. The court must examine this on the basis of the facts of the case. It is not sufficient that procedures exist in the Member State of origin for the protection of the child, but it must be established that the authorities in the Member State of origin have taken concrete measures to protect the child in question. It will generally be difficult for the judge to assess the factual circumstances in the Member State of origin. The assistance of the central authorities of the Member State of origin will be vital to assess whether or not protective measures have been taken in that country and whether they will adequately secure the protection of the child upon his or her return<sup>45</sup>.

Nevertheless, there are still challenges with the interpretation of the term ‘adequate arrangements’. The provision is very general and according to some commentators not clear enough. In consequence, it is difficult for the judge to assess whether ‘adequate arrangements’ have been indeed made. A guideline regarding the procedural and substantive requirements is missing, which limits legal certainty, as it is currently difficult for the party to know whether according to the judge the measures taken will be sufficient. In addition, it is currently not sure who has to implement the measures – practically and financially<sup>46</sup>. In addition, it is not clear from the provision itself, where the burden of proof lies with respect to establishing ‘adequate arrangements’ (whether on left-behind parent or on the alleged abductor)<sup>47</sup>. These issues are of high relevance, as the lack of precision of the article leaves open the possibility of legitimizing a refusal of return, since a non-return order can be issued whenever it is not

---

<sup>44</sup> See: European Commission, *Practice Guide for the application...*, op.cit., p. 40.

<sup>45</sup> See: Ibid.

<sup>46</sup> See: European Commission, *Study on the assessment...*, op.cit., p. 81-83.

<sup>47</sup> See: ibid.

possible to establish, within six weeks, that ‘adequate arrangements’ have been taken. It has been also stated that the automatic return of the child should be interpreted as a less rigid principle in this context, as the child’s welfare still has to be safeguarded<sup>48</sup>. In our opinion the main problem concerning above matter is that the courts may often decide to render a decision of non-return on the base that it is very difficult to establish whether the ‘adequate arrangements’ were indeed made. In consequence, even though originally the creators of the Regulation wanted to restrict the exceptions of article 13 letter b) of the 1980 Hague Convention to a strict minimum, in practice, the judge would do the opposite<sup>49</sup>.

Moreover, the judge cannot refuse to order the return of the child if the requesting party has not had the possibility to be heard (article 11 paragraph 5 of Regulation). Bearing in mind that Mr. Kramer is still in Lithuania and the judge rules in Poland this condition prolongs the procedure. However, in order to establish whether to render a decision of non-return on the base of exceptions regulated under Hague Convention, it is often essential to hear the requesting party. Having regard to the strict time-limit, the hearing shall be carried out in the quickest and most efficient manner available. One possibility is to use the arrangements laid down in Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in taking of evidence in civil or commercial matters<sup>50</sup>. The use of video-conference and teleconference, which is proposed in article 10 paragraph 4 of the above Regulation, could be particularly useful to take evidence in these cases.

If the jurisdiction has rendered a decision of non-return, it must immediately transmit the documentation to the authorities of the child’s former state of habitual residence within one month. Those documents must inform the parties and inviting them to offer their observations within three months thereafter. The matter is archived if no comments are received (article 11 paragraph 6 and 7 of Regulation).

The Regulation also provides that, notwithstanding a decision not to return the child, any decision ordering the return of the child rendered in a competent jurisdiction under the Regulation is binding. Any conflict in decisions between the former state of habitual residence and that of refuge will be settled in favour of the former (article 11 paragraph 8 of Regulation).

If the court takes a decision entailing the return of the child, this decision is directly recognized and enforceable in the requested Member State without the need for *exequatur*. Therefore, the most significant consequence of Brussels II bis is a new rule that abolishes the *exequatur*.

All things considered, after this legal and emotional path in Kramer v. Kramer case, in our opinion, as the rule, the Polish judge should render the decision of Billy's return to Lithuania to his father Mr.

---

<sup>48</sup> For example, in the case of *Neulinger and Shuruk vs. Switzerland*, the ECtHR ruled that the return of a child cannot be ordered automatically. The ECtHR made it clear, however, that the aim should still be the return of the child and that a return could be accepted in spite of a risk if there were sufficient safeguards. See: *ibid*.

<sup>49</sup> For example, Maltese courts have issued a number of non-return orders. See: *ibid*.

<sup>50</sup> See: European Commission, *Practice Guide for the application...*, *op.cit.*, p. 46.

Kramer. Only in exceptional circumstances Joanna would have won and Billy would stay with her in Poland.

## Conclusion

In the times when the world is a global village, and it is possible to travel from its one edge to another in one day, international aspects of family law are increasingly frequent in day-by-day work of a judge. Although international child abduction is not a new problem, the incidence of such abductions continue to grow with the ease of international travel, the increase in bi-cultural marriages and the rise in the divorce rate. International child abductions have serious consequences for both the child and the left-behind parent. The child is removed, not only from contact with the other parent, but also from his or her home environment and transplanted to a culture with which he or she may have had no prior ties. International abductors move the child to another State with a different legal system, social structure, culture and, often, language. The principal object of the Convention and also the Regulation, aside from protecting rights of access, is to protect children from the harmful effects of cross-border abductions (and wrongful retentions) by providing a procedure designed to bring about the prompt return of such children to the State of their habitual residence. The Convention is based on a presumption that, save in exceptional circumstances, the wrongful removal or retention of a child across international boundaries is not in the interests of the child, and that the return of the child to the State of the habitual residence will promote his or her interests by vindicating the right of the child to have contact with both parents, by supporting continuity in the child's life, and by ensuring that any determination of the issue of custody or access is made by the most appropriate court having regard to the likely availability of relevant evidence. The principle of prompt return also serves as a deterrent to abductions and wrongful removals, and this is seen by the Convention to be in the interests of children generally. The 1980 Hague Convention has contributed to resolving thousands of abduction cases and has served as a deterrent to many others through the clarity of its message (abduction is harmful to children, who have a right to contact with both parents) and through the simplicity of its central remedy (the return order). Thus, the Convention can be viewed as one of the most successful family law instruments to be completed under the auspices of the Hague Conference on Private International Law<sup>51</sup>. Kramer v. Kramer case also shows an effectiveness of this legal instrument: Billy finally came back to Lithuania, his place of habitual residence.

---

<sup>51</sup> See more: HCCH, *Outline, Hague Child Abduction Convention*, <https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf> (access: 15.04.2016).

## Bibliography:

### I. Documents and reports:

1. *Convention on the Rights of the Child*, 20 November 1989.
2. *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*.
3. European Commission, *Practice Guide for the application of the new Brussels II Regulation*, 2005, [http://ec.europa.eu/civiljustice/publications/docs/guide\\_new\\_brussels\\_ii\\_en.pdf](http://ec.europa.eu/civiljustice/publications/docs/guide_new_brussels_ii_en.pdf) (access: 15.04.2016).
4. European Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000*, Brussels, 15.4.2014 COM(2014) 225 final, [http://ec.europa.eu/justice/civil/files/matrimonial\\_act\\_part1\\_v3\\_en.pdf](http://ec.europa.eu/justice/civil/files/matrimonial_act_part1_v3_en.pdf) (access: 15.04.2016).
5. European Commission, *Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendment, Final Report, Analytical annexes*, May 2015, [http://ec.europa.eu/justice/civil/files/bxl\\_iaa\\_final\\_report\\_analtical\\_annexes.pdf](http://ec.europa.eu/justice/civil/files/bxl_iaa_final_report_analtical_annexes.pdf) (access: 15.04.2016).
6. European Commission, *Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendment, Final Report, Evaluation*, May 2015, [http://ec.europa.eu/justice/civil/files/bxl\\_iaa\\_final\\_report\\_evaluation.pdf](http://ec.europa.eu/justice/civil/files/bxl_iaa_final_report_evaluation.pdf) (access: 15.04.2016).
7. European Commission, *Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendment, Final Report, Executive summary*, May 2015, [http://ec.europa.eu/justice/civil/files/bxl\\_iaa\\_executive\\_summary\\_fin\\_29092015.pdf](http://ec.europa.eu/justice/civil/files/bxl_iaa_executive_summary_fin_29092015.pdf) (access: 15.04.2016).
8. European Court of Justice, *Judgment of the Court (Third Chamber)*, Case C-523/07, 2 April 2009.
9. Full Court of the Family Court at Melbourne, *Cooper v. Casey*, (1995) FLC 92-575, INCADAT HC/E/AU 104.
10. *Hague Convention on International Child Abduction, An analysis of the applicable law and institutional framework of fifty-one jurisdictions and the European Union*, Report For Congress, June 2004 , <https://www.loc.gov/law/help/archived-reports/hague-convention-on-international-child-abduction.pdf> (access: 15.04.2016).
11. HCCH, *Outline, Hague Child Abduction Convention*, <https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf> (access: 15.04.2016).
12. Institut suisse de droit comparé (ISDC), *The parental responsibility, child custody and visitation rights in cross-border separations*, Lausanne 2010, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425615/IPOL-PETI\\_ET\(2010\)425615\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425615/IPOL-PETI_ET(2010)425615_EN.pdf) (access: 15.04.2016).
13. Lowe Nigel, *A Statistical Analysis Of Applications Made In 2008 Under The Hague Convention Of 25 October 1980 On The Civil Aspects Of International Child Abduction, Part I – Global Report*, November 2011, <https://assets.hcch.net/upload/wop/abduct2011pd08ae.pdf> (access: 15.04.2016).
14. Polish Supreme Court, *the Decision of 26 September 2000*, case no. I CKN 776/00, published in: *Orzecznictwo Sądu Najwyższego Izba Cywilna 2001/3/38*.
15. Polish Supreme Court, *the Judgement of 16 January 1998*, case no. II CKN 855/1997, published in: *Orzecznictwo Sądu Najwyższego Izba Cywilna, 1998/9/142*.
16. *Report on the Fifth Meeting of the Special Commission to Review the Operation of the Hague*

*Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Practical Implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (30 October – 9 November 2006)*, Permanent Bureau, Hague Conference on Private International Law, The Hague 2007.

17. *Review of the Implementation of Brussels II Regulation in Relation to Parental Abduction of Children*, Freshfields Bruckhaus Deringer and the European Citizen Action Service (ECAS), Brussels 2006, [http://www.jugendamt-wesel.com/PRESSE\\_POLITIQUE/ChildAbduction-NotetoCommissionerFrattini2.pdf](http://www.jugendamt-wesel.com/PRESSE_POLITIQUE/ChildAbduction-NotetoCommissionerFrattini2.pdf) (access: 15.04.2016).
18. *The Hague Convention on the Civil Aspects of International Child Abduction concluded 25 October 1980*.
19. United States Court of Appeals for the Ninth Circuit, *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001), INCADAT HC/E/USf 301.
20. United States Court of Appeals for the Sixth Circuit, *Robert v. Tesson*, 507 F.3d 981 (6th Cir. 2007), INCADAT HC/E/USf 935.
21. United States Court of Appeals for the Third Circuit, *Feder v. Evans-Feder*, 63 F.3d 217 (3d Cir. 1995), INCADAT HC/E/USf 83.

## **II. Monographs and articles:**

22. Estin Ann Laquer, *Where (in the World) do Children Belong?*, “BYU Journal of Public Law”, 2011, Vol. 25 Issue 2.
23. Ignaczewski Jacek, *Komentarz do Konwencji dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę, sporządzonej w Hadze dnia 25 października 1980 roku*, Legalis/el., 2015.
24. Kuziak Leszek, *Uprowadzenie dziecka za granicę*, [in:] Ignaczewski Jacek (ed.), *Władza rodzicielska i kontakty z dzieckiem – Komentarz*, Warszawa 2012.
25. Lenaerts Koen, *The Best Interest of the Child Always Come First: The Brussels II bis Regulation and the European Court of Justice*, “Jurisprudencija”, 2013, Vol. 20, Issue 4.
26. Radwan Marcin, *Wybrane zagadnienia postępowania wywołanego przez bezprawne uprowadzenie lub zatrzymanie dziecka w innym państwie członkowskim*, „Europejski Przegląd Sądowy”, 2011, No. 2.
27. Torto Melissa, *International Family Law – Habitual Residence, Changing Custody Rights, and Wrongful Retention and Removal under the Hague Convention on Civil Aspects of International Child Abduction – Redmond v. Redmond*, 724 F.3d 729 (7th Cir. 2013), “Suffolk Transnational Law Review”, Winter 2014, Vol. 37 Issue 1.
28. Trimmings Katarina, *Child Abduction within the European Union*, Studies in Private International Law, Oxford 2013.
29. Vivatvaraphol Tai, *Back to Basics: Determining a Child's Habitual Residence in International Child Abduction Cases Under the Hague Convention*, “Fordham Law Review”, May 2009, Vol. 77 Issue 6.
30. Zatorska Jolanta, *Komentarz do rozporządzenia nr 2201/2003 dotyczącego jurysdykcji oraz uznawania i wykonywania orzeczeń w sprawach małżeńskich oraz w sprawach dotyczących odpowiedzialności rodzicielskiej*, LEX/el., 2010.