

Summary of Contents

page

Preface	XI
----------------------	-----------

Chapter 1. Scope of Application, Definitions and Relations to Other Instruments (Articles 1, 2 and 59-61)

Prof. Mirela Župan (University of Osijek, Croatia)

Text of Articles 1, 2. – Relevant decisions of the CJEU. – Relevant decisions of the ECtHR. – 1. Setting the scene – Brussels IIa Regulation in the area of judicial cooperation in family matters. – 1.1. European judicial cooperation in family matters (<i>stricto sensu</i>). – 1.2. Interplay between the EU and other actors on the international scene. – 2. Scope and definitions. – 2.1. Scope of application: ‘matrimonial matters’. – 2.2. Scope of application: ‘parental responsibility’. – 2.3. Scope of application – preliminary questions on the status of the child. – 2.4. Personal, temporal and geographical scope of application. – 3. Autonomous definitions. – Text of Articles 59-62. – 4. Relation to other instruments.....	1
---	----------

Chapter 2. Jurisdiction in Matrimonial Matters (Article 3, 6, 7)

Prof. Carola Ricci (University of Pavia, Italy)

Text of Articles 3-7. – Relevant decisions of the CJEU. – 1. General frame. – 2. Exclusive nature of multiple alternative grounds of jurisdiction and ‘forum shopping’. – 3. Single grounds of jurisdiction under Article 3(1). – 3.1. Grounds of jurisdiction based on habitual residence. – 3.1.a. Characterization of habitual residence. – 3.1.b. Fact-weighting and relevance of the intention in complex cases. – 3.1.c. Voluntary manipulation or omission of factual elements by the parties. – 3.2. Grounds of jurisdiction based on common nationality. – 4. Ancillary grounds of jurisdiction under Articles 4 and 5. – 5. Relation between grounds of jurisdiction within the Brussels IIa Regulation system and residual national grounds.....	37
---	-----------

Chapter 3. Jurisdiction in Parental Responsibility Matters

(Articles 8, 9 and 13, 14)

Dr. Agnė Limantė (Law Institute of Lithuania, Lithuania)

Prof. Ivana Kunda (University of Rijeka, Croatia)

Text of Articles 8, 9 and 13, 14. – Relevant decisions of the CJEU. – 1. Rationale of the provision and general frame. – 2. Child’s ‘habitual residence’ as an autonomous concept. – 3. Child’s ‘habitual residence’ as a fact-based concept. – 4. Criteria for determining habitual residence. – 4.1. Common circumstances. – 4.2. Physical presence on the territory. – 5. Effect of the child’s age on determining habitual residence. – 5.1. Infants and small children. – 5.2. Older children. – 6. Continuing jurisdiction of the child’s former habitual residence. – 7. Child’s presence as basis for jurisdiction. – 8. Residual jurisdiction (Article 14).....61

Chapter 4. Jurisdiction in Child Abduction Proceedings

(Articles 10, 11)

Prof. Costanza Honorati (University of Milano-Bicocca, Italy)

Dr. Agnė Limantė (Law Institute of Lithuania, Lithuania)

1. The general frame of abduction proceedings: the 1980 Hague Convention on Child Abduction and its relation to the Brussels IIa Regulation. – 2. The definition of abduction: removing to, or retaining in, a different State. – 2.1. Removal from/non-return to the State of habitual residence. – 2.2. Notion of custody rights. – 2.2.a. ‘Rights of custody conferred by the national applicable law’. – 2.2.b. Unmarried fathers/grandparents without parental responsibility and ‘inchoate’ custody rights?. – 2.3. Requirement that rights of custody are actually exercised. – Text of Article 10. – 3. The general rule in child abduction cases: no transfer of jurisdiction. – 3.1. Exceptions to the general rule: transfer of jurisdiction. – Text of Article 11. – Relevant decisions of the CJEU. – Relevant decisions of the ECtHR. – 4. General frame for return proceedings. – 4.1. Duties of the State of refuge: the issue of return. – 4.1.a. Duty to act expeditiously. – 4.1.b. Hearing of the child and of the left-behind parent. – 4.2. Exceptions for return. – 4.2.a. No exercise of custody rights. – 4.2.b. Consent and acquiescence. – 4.2.c. Grave risk exception. – 4.2.d. No refusal of return if ‘adequate arrangements’ have been provided. – 4.2.e. Objections of the child. – 4.2.f. Request for return lodged after more than one year since the removal. – 4.2.g. Contrast with fundamental principles of the requested State (Article 20 of the 1980 Hague Convention on Child Abduction). – 4.3. Interpretation of the ‘best interests of the child’ in the light of return proceedings. – 5. Duties of the State of habitual residence: Article 11(6)-(8) and the ‘overriding mechanism’. – 5.1. Refusal to return grounded on Article 13 of the 1980 Hague Convention on Child Abduction. – 5.2. Immediate transmission of the decision to the State of habitual residence. – 5.3. The proceedings in the State of habitual residence. – 5.4. The scope of competence of the court of habitual residence. – 5.5. Special issues in assessing custody rights in Article 11(7) proceedings: custody rights of the abducting parent and the issue of time.....93

Chapter 5. Hearing of the Child (Articles 11(2), 2341(2)(c), 42(2)(a))*Prof. Benedetta Ubertazzi* (University of Milano-Bicocca, Italy)

Text of Articles 11(2), 23, 41(2)(c), 42(2)(a). – Relevant decision of the CJEU. – Relevant decisions of the ECtHR. – 1. Child’s right to be heard in the Brussels IIa Regulation. – 2. Hearing the child in human rights treaties recalled by the Brussels IIa Regulation. – 3. Hearing the child within the Brussels IIa Regulation: in child abduction procedures. – 3.1. Hearing the child as a condition for the recognition of judgments. – 3.2. Hearing the child as a condition for the enforceability of rights of access and return. – 4. Child’s right to be heard in Member States’ national laws. – 5. Hearing the child in the Commission Proposal for recasting the Brussels IIa Regulation.....**155**

Chapter 6. Prorogation of Jurisdiction (Article 12)*Prof. Cristina Gonzalez Beilfuss* (University of Barcelona, Spain)

Text of Article 12. – Relevant decisions of the CJEU. – 1. Rationale of the provision and general frame. – 2. Substantial requirements for prorogation. – 2.1. The courts of a Member State exercising jurisdiction on an application for divorce, legal separation or marriage annulment. – 2.2. The courts of a Member State with a substantial connection to the child. – 3. The procedural steps. – 3.1. Express or otherwise unequivocal acceptance. – 3.2. Scrutiny by the chosen court: the child’s best interests. – 4. Effects and duration of the prorogation agreement. – 5. Jurisdiction agreements concerning children who are habitually resident in a third State; relationship with the 1996 Hague Convention on Protection of Children.....**183**

Chapter 7. Transfer of Proceedings (Article 15)*Prof. Costanza Honorati* (University of Milano-Bicocca, Italy)*Dr. Agnė Limantė* (Law Institute of Lithuania, Lithuania)

Text of Article 15. – Relevant decisions of the CJEU. – 1. Rationale of the provision and general frame. – 2. Substantial requirements for transfer of proceedings. – 2.1. The child’s ‘particular connection’ with a different State. – 2.2. The different court is ‘better placed’ to hear the case. – 2.3. The transferral of proceedings is ‘in the best interests’ of the child. – 3. The procedural steps: the role of the two courts and the role of the parties. – 4. The child’s views on transferral. – 5. Scope of the transfer order. – 6. Article 15 in respect of care proceedings which are preparatory to adoption. – 7. Other issues.....**199**

Chapter 8. *Lis Pendens* (Articles 16, 19)

Prof. Ivana Kunda (University of Rijeka, Croatia)

Dr. Danijela Vrbljanac (University of Rijeka, Croatia)

Text of Articles 16, 19. – Relevant decisions of the CJEU. – 1. Rationale and general frame. – 2. Time when the court is seised. – 2.1. When is ‘a document’ ‘lodged with the court’?. – 2.2. Relevance of non-judicial proceedings preliminary to divorce proceedings. – 3. No *lis pendens* between matrimonial proceedings and parental responsibility proceedings. – 4. The (sometimes different) nature of the two parallel proceedings. – 5. The priority rule: the duty for the court second seised to stay the proceedings. – 5.1. Further problems in applying the priority rule. – 6. The burden of proof is on the party. – 7. Parallel proceedings must be before courts of different Member States. – 8. *Lis pendens* in regards of divorce, legal separation and marriage annulment proceedings. – 8.1. Cause of action need not be the same ... – 8.2. ... but the parties need to be the same. – 9. *Lis pendens* in regard of parental responsibility proceedings. – 9.1. The same cause of action and subject matter ... – 9.2. ... and the same child (not the same parties).....**219**

Chapter 9. Provisional and Protective Measures (Article 20)

Prof. Ivana Kunda (University of Rijeka, Croatia)

Dr. Danijela Vrbljanac (University of Rijeka, Croatia)

Text of Article 20. – Relevant decisions of the CJEU. – 1. Rationale of the provision and general frame. – 2. Relation with the 1996 Hague Convention on Protection of Children. – 3. Conditions for granting. – 3.1. The notion of ‘provisional, including protective, measures’. – 3.2. Urgency. – 3.3. Territorial link. – 4. Limited territorial and temporal effects. – 4.1. Territorial limitations. – 4.2. Temporal conflicts.....**247**

Chapter 10. Cooperation between Central Authorities (Articles 53-55)

Prof. Mirela Župan (University of Osijek, Croatia)

Text of Articles 53-55. – Relevant decisions of the CJEU. – 1. Administrative cooperation within the system of international and European instruments. – 2. Purpose, types and main features of administrative cooperation. – 3. Designation of the central authority. – 4. General functions. – 5. Specific functions. – 5.1. Requests for information exchange. – 5.2. Assistance with the recognition and enforcement of decisions. – 5.3. Facilitating communications between the courts. – 5.4. Facilitating mediation and agreement between holders of parental responsibility. – Annex – Central Authorities Contact Details.....**265**

Chapter 11. Cross-Border Child Placement (Article 56)

Marta Tarragona Fenosa (University of Barcelona, Spain)

Text of Article 56. – Relevant decisions of the CJEU. – 1. Cross-border placement: a measure for the protection of the child. Irrelevance of the nature of placement. – 1.1. The cross-border placement as a parental responsibility measure in civil law matters. – 1.2. Main features of the cross-border placement. – 2. The reasons for a cross-border placement. – 3. Different nature of procedures. – 3.1. Procedures where domestic child placement rules require the intervention of a public authority: Article 56(1)-(3). – 3.2. Procedures where domestic child placement rules do not require the intervention of a public authority: Article 56(4). – 4. Provisional measures in cross-border child placements. – 5. Recognition and enforcement of cross-border child placement orders. – 6. Practical problems faced when applying Article 56 and national practices.....**293**

Bibliography.....313

