Court of Justice of the European Union
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Press and Information

Judgment in Case C-289/21
IB (Habitual residence of a spouse – Divorce)

Jurisdiction to hear a divorce application: the Court clarifies the meaning and scope of the concept of the « habitual residence » of a spouse

That concept implies that a spouse, even if he or she divides his or her time between two Member States, can have only one habitual residence

IB, a French national, and FA, an Irish national, were married in Ireland in 1994. They had three children, who are now adults. In 2018, IB filed an application for divorce before the tribunal de grande instance de Paris (Regional Court, Paris, France). That court declared that it lacked territorial jurisdiction to rule on the divorce and IB subsequently lodged an appeal before the cour d'appel de Paris (Court of Appeal, Paris, France). The latter is asked to assess the jurisdiction of the tribunal de grande instance de Paris (Regional Court, Paris) with regard to IB's habitual residence, in accordance with the Brussels IIa Regulation. [1] In that respect, it notes, inter alia, that there are numerous circumstances indicating IB's personal and family ties with Ireland, where he lived since 1999 with his wife and children. However, it also points out that, for several years, IB returned every week to France, where he established the centre of his professional interests. Accordingly, the referring court considered that IB had in fact two residences, one for the weeks when he was in Paris for professional reasons and the other, with his wife and children in Ireland, for the rest of the time.

In those circumstances, the cour d'appel de Paris (Court of Appeal, Paris) decided to refer the matter to the Court of Justice in order to determine which courts have jurisdiction to rule on the divorce of IB and FA, pursuant to Article 3(1)(a) of the Brussels IIa Regulation. In particular, it asks the Court whether a spouse who divides his or her time between two Member States may have his habitual residence in both Member States, with the result that the courts of both Member States have jurisdiction to rule on the divorce.

In its judgment, the Court clarifies the concept of the 'habitual residence' of a spouse and holds that, even if a spouse divides his or her time between two Member States, he or she may have only one habitual residence within the meaning of Article 3(1)(a) of the Brussels IIa Regulation.

Findings of the Court

Since the Brussels IIa Regulation does not provide any definition of that concept and makes no reference to the law of the Member States in that regard, the Court states that that concept must be given an autonomous and uniform interpretation. It observes, inter alia, that neither Article 3(1)(a) of the Brussels IIa Regulation nor any other provisions of that regulation provide that a person may, at the same time, have several habitual residences or be habitually resident in several places. Such a situation would, in particular, be liable to undermine legal certainty, by making it more difficult to determine in advance which courts have jurisdiction to rule on the divorce and by making it more difficult for the court seised to determine whether it has jurisdiction.

[1] 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 2003 L 338, p. 1, 'the Brussels IIa Regulation').

Next, relying on its case-law on the habitual residence of a child, the Court considers that the concept of 'habitual residence', [2] for the purposes of determining jurisdiction in matters relating to the dissolution of matrimonial ties, is characterised, in principle, by two factors, namely, first, the intention of the person concerned to establish the habitual centre of his or her interests in a particular place and, secondly, a presence which is sufficiently stable in the Member State concerned.

Thus, a spouse relying, as an applicant, on the jurisdiction of the courts of the Member State of his or her habitual residence, pursuant to Article 3(1)(a) of the Brussels IIa Regulation, must necessarily have transferred his or her habitual residence to a Member State other than that of the former matrimonial residence. He or she must therefore have manifested an intention to establish the habitual centre of his or her interests in that other Member State and have demonstrated that his or her presence in the territory of that Member State shows a sufficient degree of stability.

In that context, the Court emphasises the particular circumstances surrounding the determination of the habitual residence of a spouse. Thus, where a spouse decides to settle in another Member State because of a marital crisis, he or she remains free to retain social and family ties in the Member State of the former matrimonial residence. Moreover, the environment of an adult is more varied than that of a child, consisting of a wider range of activities and diverse interests, and it cannot be required that they should be focused on the territory of a single Member State.

In the light of those considerations, the Court concludes that, although a spouse may have several residences at the same time, he or she may have, at a given time, only one habitual residence within the meaning of Article 3(1)(a) of the Brussels IIa Regulation. Consequently, where a spouse divides his or her time between two Member States, only the courts of the Member State in which that habitual residence is situated have jurisdiction to rule on the application for dissolution of the matrimonial ties. It is for the referring court to ascertain, on the basis of all the factual circumstances of the case, whether IB has transferred his habitual residence, for the purposes of Article 3(1)(a) of the Brussels IIa Regulation, to the Member State of that court.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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[2] See, inter alia, judgment of 28 June 2018, HR, C-512/17.