CJEU to Rule on Prorogation and Transfer of Jurisdiction under the Brussels II a Regulation

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The Civil Division of the Court of Appeal of England and Wales recently made a request for a preliminary ruling on the interpretation of Articles 12 and 15 of Regulation (EC) No 2201/2003 concerning **jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility** (the Brussels II *a* Regulation). So far, none of these provisions has been the object of a preliminary ruling by the CJEU.

Articles 12 and 15 provide a number of exceptions to the general rule set forth in Article 8, according to which matters of parental responsibility should be decided by the courts of the Member State where the child is habitually resident. Pursuant to Article 12(3), the courts of a Member State shall also have jurisdiction where (a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State, and (b) the jurisdiction of such court has been accepted by all the parties to the proceedings and is in the best interests of the child ("prorogation of jurisdiction"). Under Article 15, jurisdiction may be transferred, in exceptional circumstances, to a court with which the child "has a particular connection", provided that the court in question appears to be "better placed to hear the case".

The CJEU is asked to clarify, in the first place, how long a prorogation of jurisdiction made in conformity with Article 12 should be deemed to last, *i.e*. whether the jurisdiction of the prorogated court (in the case at hand, a Spanish court) only continues until there has been a final judgment in the proceedings for the benefit of which the prorogation was made, or if it continues "even after the making of a final judgment". Secondly, as regards Article 15, the CJEU is asked to determine whether jurisdiction may be transferred from one Member State (Spain) to another (United Kingdom) in circumstances where there are no current

proceedings concerning the child in the first State.

The case from which the referral originated concerns a minor ("S"). In February 2010, S, then a 5-year-old child, left Spain and moved to England with his mother. A few weeks later, the father instituted proceedings in Spain regarding various issues concerning the parental responsibility over S. The parents subsequently reached an agreement (only signed by the mother) on some of these issues, including the provision for S to reside with the mother in England. A few months later, the father re-instigated the proceedings before the same Spanish Court with a new application for residence. At the same time, the mother applied for substantive relief in England. The English Court then made an order declaring that S was habitually resident in England and Wales, and that the English courts had exclusive jurisdiction to determine issues in respect of the child. The parents renewed their negotiations in Spain and prepared a further agreement, specifying the arrangements for S's future care. In doing so, the mother made clear that she was relying on Article 12(3) of Brussels II *a* Regulation, as she believed that the English Court had sole jurisdiction to make orders in respect of S. The agreement ('convenio') was signed by both parents in July, witnessed by a court clerk and then endorsed by the Spanish Court by an order of October 2010. The order actually brought the Spanish proceedings to an end.

In December 2010, the mother commenced new proceedings in the English Courts, seeking a variation of the contact arrangement decided in the Spanish 'convenio'. In response, the father commenced proceedings in Spain and then in England, seeking enforcement of the Spanish order of October 2010.

In December 2011, the English Court issued an order, by consent, confirming that the mother had accepted the jurisdiction of the Spanish court, in conformity with Article 12(3) of the Brussels II *a* Regulation, which later resulted in the Spanish order of October 2010, and that she no longer intended to object to the enforcement of such Spanish order.

She then moved to ask the Spanish Court to declare that it lacked the jurisdiction to deal with S or any proceedings concerning S, and that in the event the Court considered that it continued to have jurisdiction, asked for the transfer of the proceedings to England, pursuant to Article 15 of the Brussels II *a* Regulation. In February 2012, the Spanish Court confirmed that there was no reason to declare lack of jurisdiction, the judgment having become final, and there being no

pending proceedings between the parties.

The High Court subsequently declared that the prorogation of jurisdiction of the Spanish Court under Article 12(3) of the Brussels II *a* Regulation by the mother had come to an end with the making of the final order of October 2010, that there was no residual jurisdiction in Spain, and that the English Court did not need to seek a transfer (as, in any event, there were no "living" proceedings in Spain to transfer pursuant to Article 15). The English Court concluded that it could properly assume jurisdiction to determine issues relating to S pursuant to Article 8 of the Brussels II *a* Regulation.

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