

French Court Rules Court of the Child's Initial Habitual Residence Retains Jurisdiction

By Céline Camara

Céline Camara is a research fellow at the Max Planck Institute Luxembourg.

On 5 March 2014 the French Supreme Court for Private and Criminal Matters (*Cour de cassation*) ruled that in child abduction cases, the Court of the initial habitual residence of the child retains jurisdiction to decide over parental responsibility matters pursuant to Article 10 of Regulation 2201/2003 of 27 November 2003 (Brussels IIbis). The decision is available [here](#).

In June 2011, Mr. Y (the French father) filed a request for sole custody of his daughter H (born in France) and for the suspension of Ms. X's (the Belgian mother) right of access in France. The French courts rendered a favourable outcome in July 2011. In the meantime, Mrs. X left France and abducted the child to Belgium after having brought a claim for sole custody before Belgian courts. In August 2011, Mr. Y submitted a request for the child's return under the 1980 Hague Convention. In the absence of any return order, he took it on himself to bring his daughter to France in October 2011. H. was 8 months old and her mother was still breastfeeding her at that time. One month later, Belgian courts granted sole custody to the mother.

In June 2012, Ms. X lodged an appeal to contest the jurisdiction of French courts concerning parental responsibility matters, claiming that French courts do not have jurisdiction because H's habitual residence is in Belgium and that Court of Appeal did not take into consideration the impact of the child's removal from Belgium by the father.

The Court of Appeal dismissed the appeal although mentioning that the child's removal from Belgium by the left behind parent was "brutal" and "unfortunate".

The *Cour de cassation* decision revolves around Article 10 of Regulation 2201/2003, which holds that the courts of the child's habitual residence before

the abduction should retain jurisdiction until the child has acquired a new habitual residence in another Member State and either (a) the (other) person having custodial rights gives their consent or (b) the child has resided in that Member State for at least one year.

According to the *Cour de Cassation* those requirements were not met.

More interesting than the decision itself, is the emphasize the *Cour de Cassation* placed on the fundamental objectives of Brussels IIbis return mechanism by referring to ECJ case law (notably *Deticek*, C 403/09 PPU and *Povse*, C 211/10 PPU): Firstly by reaffirming that Regulation 2201/2003 aims at deterring child abductors and secondly by mentioning the objective of prioritizing the return of the child to his initial habitual residence.

While hardly surprising, the decision is nonetheless to be welcomed. Indeed, the child initial habitual residence is the *forum conveniens* to decide on custody issues. In this light, the decision appears to be exemplary and in line with the objectives of Brussels IIbis which is to strengthen the return mechanism set by the Hague Convention 1980 and to deter abductions.

Besides, the strict application of the return mechanism sheds light on the shift of profile of the abductor. The 1980 Hague Convention drafters elaborated the return mechanism based on the fact that the mother used to be the primary caretaker and therefore she would be the first beneficiary of such return mechanisms. Nowadays however, fathers tend to have more custodial rights and 2/3 of cases concerns mother abductors.

The facts of this case accurately reflect the difficult practical consequences of this shift: On the one hand, the powers of the court of habitual residence and the deterring effect of the return mechanism have to remain the primary considerations. On the other hand it has to be acknowledged that the left behind parent's reaction can factually undermine the best interests of the child.