

CJEU on multiple places of (habitual) residence under the Brussels II bis Regulation in the case IB, C-289/20

In its judgment delivered this Thursday in the case IB, C-289/20, the Court of Justice addresses the issue of multiple places of residence under the Brussels II bis Regulation in the context of a request for a preliminary ruling originating from the proceedings for a divorce.

As a reminder, the preliminary question referred to the Court in this case reads as follows:

Where, as in the present case, it is apparent from the factual circumstances that one of the spouses divides his time between two Member States, is it permissible to conclude, in accordance with and for the purposes of the application of Article 3 of [the Brussels II bis Regulation] that he or she is habitually resident in two Member States, such that, if the conditions listed in that article are met in two Member States, the courts of those two States have equal jurisdiction to rule on the divorce?

Opinion of AG

As reported back in July, AG Campos Sánchez-Bordona delivered his Opinion in this case. As there is no English translation of the Opinion yet, a short reminder of its essential findings does not seem redundant.

In essence, AG proposed to the Court to consider that under the Brussels II bis Regulation a spouse may have only one place of habitual residence (points 83 et 90). If, in fact, as the preliminary question presupposes, a spouse divides his life between two Member States, it has to be considered that he or she does not have a place of habitual residence within the meaning of Article 3 of the Regulation

(point 98). If that leads ultimately to the situation where no forum within the EU can hear the case for a divorce, in order to remedy situations of denial of justice, the jurisdiction might be exceptionally attributed to the courts of one of the Member State where the spouse resides (points 100 and 101).

An English translation of the answer proposed in point 101 of the Opinion is also available at the EAPIL blog due to the courtesy of Marta Requejo Isidro.

Judgment of the Court

In its judgment, the Court also considered that while a spouse may have multiple places of residence, that person may have only one place of “habitual residence” within the meaning of Article 3(1)(a) of the Brussels II bis Regulation (paragraph 51).

Reminding that it is for the national court to establish the habitual residence of the spouse, taking account of all the circumstances of fact specific to each individual case (paragraph 52), the Court provided the referring court with some further guidance as to that task. A cursory lecture of the judgment seems to reveal a suggestion according to which, following that guidance and at least a priori, it should be possible to identify a single place of habitual residence of the spouse in the circumstances of the case at hand (paragraphs 61 and 62).

As noted in the previous post, in its points 100 and 101, the Opinion seemed to endorse a forum of necessity made available to the applicant through the interpretation of the Brussels II Regulation itself. The Court did not elaborate on that issue, confining itself to the interpretation of Article 3 of the Regulation, hinting on the aforementioned a priori suggestion as to the identification of the place of habitual residence.

The judgment is available here, in French.

[UPDATE: for a press release in English, click here].