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Thesis title:

The habitual residence of a child as a basis for jurisdiction in Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction

Abstract:

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, which is a recast of Regulation No 2201/1111, will take effect on 1 August 2022. The basic connecting factor in both of these regulations is the habitual residence of the child. This connecting factor now appears in many international agreements regulating applicable law, jurisdiction and the recognition and enforcement of decisions in civil matters, as well as in EU regulations on judicial cooperation in civil matters. The factor plays a special role in regulations covering family law issues.

Over the more than 15 years that Regulation No 2201/2003 has been in force, the concept of 'habitual residence of the child' has been repeatedly interpreted by the Court of Justice of the European Union. Despite this, the issue still raises significant doubts and problems in case law.

The aim of this paper is to show the child's habitual residence as a basis for jurisdiction in Regulation No 2019/1111 in a broad context, also taking into account theoretical and legal considerations on the essence and construction of the jurisdictional norm and an outline of the history of the formation of the habitual residence criterion as a jurisdictional and conflict-of-law connecting factor in the field of international law in the twentieth century, as well as a brief characterisation of the other personal connecting factors. The interpretation of the concept of 'habitual residence of the child' in Regulation 2019/1111 must take into account the general aims of European civil procedural law and the objectives of judicial cooperation in the field of family law, as well as the motives of the EU legislator in enacting this Regulation and its predecessors. This work also seeks to answer doubts that arise in practice when determining jurisdiction on the basis of the child's habitual residence connecting factor. Consequently, the considerations included in it also cover the issue of the co-application of the provisions of Regulation No 2019/1111 and Polish Code of Civil Procedure.

The starting point for the research carried out was the conviction that the concept of the child's habitual residence is essential for the interpretation of all the provisions of Regulation No 2019/1111.