Cross-Border divorce within the EU

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Relevant international legislation

1. Council Regulation (EC) No 2201/2003 concerning jurisdiction and recognition and enforcement of judgment in matrimonal matters and in matters of parental responsibility replaling Regulation (EC) No 1347/2000 (Brussels II bis)
2. Council Regulation(EU) No 1259/2010 of 20 December 2010 inplementing enhanced cooperation in the area of law applicable to divorce and legal separation (Rome III)
3. Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
4. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of Member States in the taking of evidence in civil or commercial matters
5. Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures of Protection of Children (Hage Convension on Parental Responsibility)
6. Hague Convention of 25 October 1980 on the Civil Aspect of International Child Abduction (Hague Convention)

Hungarian legislation

1. Law No III of 1952 on Civil Procedures (Law No CXX of 2009 on Civil Code has not yet came into force)

2. Law No IV of 1952 on Marriage, Family and Guardianship

3. Decree Law No 13 of 1979 on International Civil Law

Jurisdiction concerning matrimonial matters under Brussels II bis

- chapter II, section 1, article 3
- habitually resident and nationality of spouses are equal principles
- only the nationality of one of the spouses can't determine the jurisdiction of the member state
- it can be that more member states have jurisdiction
- choice of the plantiff or the parties
- the courts have to examine do they have a jurisdiction or not

Presenting the Hadadi Case

Article 8 and 12

(6)- more appropriate to have a single instrument for matters of divorce and parental responsibility

Section 2, Article 8 jurisdiction in matters parental responsibility

presenting a case

The meaning of habitual residence of the child

- defined country's territory
- not a simple physical presence but a permanent regular stabile presence
- real center of the child's life
- it can be interrupted

According to the Hungarian Supreme Court

- where the child lives for some length of time (the ordinary residence of the child/recognizable purpose of permanent staying)
- where the child takes part in education
- where the child's extended family other relatives, friends live / where the child can develop these kind of relationships
- where the child's parent works/ earns regular income / has workplace
- where the common residence of the child and his/her parent is situated
- where the child and his/her parent can live togethet undisturbed

Problem with (6) and Article 12 if the placement is a critical issue between the parties

What is the superior interest of the child?

Rome III

- Rome III – universal
- new Hungarian rules in connection with this Regulation

presenting a case

The applicable law

The applicable law can be:

1. The law of the member state participating in enhanced cooperation

2. The law of that member state who is not participating in enhanced cooperation

3. The law of that state who is not the member of the EU

The importance of the time when the parties choose the applicabe law

1. When they get married and short time after this event – 2 possibilities
2. During the marriage – 3 possibilities
3. At the end of the marriage – 4 possibilities

Problems with Article 12 and 13

presenting a case

International child abduction in Hungary

1. The role of Pest Central Discrict Court, Budapest Metropolitan Court and Supreme Court

2. The parental responsibility in Hungary

3. Prevention of the child abduction

Existing bilateral conventions concerning family law

There are 2 types:

- One of them is about jurisdiction, applicable law,recognition and enforcement

- The other type is only about recognition and enforcement

presenting a case

Thank you for your attention!

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