

Handout for Lecture on Parental Responsibility Jurisdiction by Paul Beaumont

Case C-523/07 A, judgment of 2 April 2009 of the European Court of Justice

- “30 By its second question, the referring court is uncertain about the interpretation to be given to the concept of ‘habitual residence’ within the meaning of Article 8(1) of the Regulation, in particular in a situation in which the child has a permanent residence in one Member State but is staying in another Member State carrying on a peripatetic life there.
- 31 Article 8(1) of the Regulation lays down the principle that the jurisdiction of the courts of the Member States in matters of parental responsibility is established according to the place of the child’s habitual residence at the time the court is seised, but does not however define the content of that concept.
- 32 Under Article 13(1) of the Regulation, where a child’s habitual residence cannot be established the courts of the Member State where the child is present are to have jurisdiction.
- 33 Thus, the physical presence alone of the child in a Member State, as a jurisdictional rule alternative to that laid down in Article 8 of the Regulation, is not sufficient to establish the habitual residence of the child.
- 34 According to settled case-law, it follows from the need for uniform application of Community law and from the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, in particular, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, and Case C-98/07 *Nordania Finans and BG Factoring* [2008] ECR I-1281, paragraph 17).
- 35 Since Article 8(1) of the Regulation does not make any express reference to the law of the Member States for the purpose of determining the meaning and scope of the concept of ‘habitual residence’, that determination must be made in the light of the context of the provisions and the objective of the Regulation, in particular that which is apparent from Recital 12 in the preamble, according to which the grounds of jurisdiction which it establishes are shaped in the light of the best interests of the child, in particular on the criterion of proximity.
- 36 The case-law of the Court relating to the concept of habitual residence in other areas of European Union law (see, in particular, Case C-452/93 P *Magdalena Fernández v Commission* [1994] ECR I-4295, paragraph 22; Case C-372/02 *Adanez-Vega* [2004] ECR I-10761, paragraph 37; and Case C-66/08 *Kozłowski* [2008] ECR I-0000) cannot be directly transposed in the context of the assessment of the habitual residence of children for the purposes of Article 8(1) of the Regulation.
- 37 The ‘habitual residence’ of a child, within the meaning of Article 8(1) of the Regulation, must be established on the basis of all the circumstances specific to each individual case.
- 38 In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or
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intermittent and that the residence of the child reflects some degree of integration in a social and family environment.

- 39 In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.
- 40 As the Advocate General pointed out in point 44 of her Opinion, the parents' intention to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or lease of a residence in the host Member State, may constitute an indicator of the transfer of the habitual residence. Another indicator may be constituted by lodging an application for social housing with the relevant services of that State.
- 41 By contrast, the fact that the children are staying in a Member State where, for a short period, they carry on a peripatetic life, is liable to constitute an indicator that they do not habitually reside in that State.
- 42 In the light of the criteria laid down in paragraphs 38 to 41 of this judgment and according to an overall assessment, it is for the national court to establish the place of the children's habitual residence.
- 43 However, it is conceivable that at the end of that assessment it is impossible to establish the Member State in which the child has his habitual residence. In such an exceptional case, and if Article 12 of the Regulation, which concerns the jurisdiction of the national courts with respect to questions relating to parental responsibility where those questions are related to an application for divorce, legal separation or marriage annulment, is not applicable, the national courts of the Member State in which the child is present acquire jurisdiction to hear and determine the substance of the case pursuant to Article 13(1) of the Regulation.
- 44 Therefore, the answer to the second question is that the concept of 'habitual residence' under Article 8(1) of the Regulation must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.'