

NEW ASPECTS IN THE REGULATION OF INTERNATIONAL DIVORCE. EU REGULATION 2019/1111 ON JURISDICTION, RECOGNITION, AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND PARENTAL RESPONSIBILITY AND ON INTERNATIONAL CHILD ABDUCTION

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Abstract: *A reform that refers to two essential directions in civil matters was required along with the application of the principle of free movement in a modern and flexible manner. The amendment of Regulation (EC) no. 2201/2003 was carried out in the direction of divorce, legal separation, and annulment of marriage.*

The second direction considers the assignment, exercise, delegation and total or partial withdrawal of parental responsibility. The amending regulation clarifies the right of the child to be given the opportunity to express his opinion in the proceedings of which he is the object and contains provisions that complement the Hague Convention of October 25, 1980 on the civil aspects of international child abduction in relations between states EU member.

Key words: *divorce, separation, annulment of marriage, parental responsibility, child abduction.*

1. Introduction

Regarding the values highlighted within this reform, they come to be inscribed on the general line of clarity, legal security, flexibility and ensuring better access to justice, on the one hand.

On the other hand, it is time for the application of the norm to determine a greater efficiency of the procedures that strengthen the rights of individuals, especially children,

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in the framework of judicial proceedings to facilitate cooperation between judicial and administrative authorities and the execution of decisions in matters of family law with cross-border implications.

Mutual recognition of judgments in civil matters should be improved.

Finally, it is proposed that the notion of civil matter be interpreted in the sense that it can even include measures that, from the point of view of the legal system of a member state, belong to public law. It should cover all applications, measures, or decisions in the matter of "parental responsibility" within the meaning of the Reform Regulation, in accordance with its objectives.

In all cases involving children, particularly in cases of international child abduction, courts should consider the possibility of reaching a settlement through mediation and other appropriate means, assisted, as appropriate, by existing networks and structures of support for mediation in case of cross-border disputes in the matter of parental responsibility.

The fact that the settlement of legal situations in which children are involved is regulated by three normative sources - one international, the Convention, one European, the reforming Regulation, and the national law - does not help solving quickly nor the uniform application of the law.

We are talking about three sources in the sense that national law is also applied to international situations with a foreign character - The decision of July 1, 2014 in the case *Blaga v. Romania* (Application no. 54443/10) Strasbourg, 01/10/2014 in which the plaintiff O. Blaga also has American citizenship (Case C 376/14 PPU, request for a preliminary decision made by the Supreme Court (Ireland)).

The response of the European Union legislator regarding how to calibrate the ratio between the two European legal instruments - the Regulation and the Convention - was found in article 11 of Regulation no. 2201/2003, and the one related to movement and illegal detention/non-return is in the Convention, in art 12.

Thus, recital 17 of Regulation no. 2201/2003 had the following content: "In case of displacement or unlawful retention of a child, his return should be obtained without delay, and, for this purpose, the Hague Convention of October 25, 1980 should continue to apply, as supplemented by the provisions of this Regulation, in particular those of Article 11. Courts in the Member State to which the child has been moved or unlawfully detained should be able to oppose his return in specific, suitably justified cases.

However, such a judgment should be able to be replaced by a subsequent judgment of the court of the Member State of the child's habitual residence before his removal or wrongful retention.

If this judgment involves the return of the child, the return should be carried out without having to resort to any procedure for the recognition and enforcement of the judgment in question in the Member State where the abducted child is located."

The Council of the European Union thus decided to adopt this reforming Regulation, because on April 15, 2014, the Commission adopted a report on the application of Regulation (EC) no. 2201/2003 of the Council, currently repealed.

As it clearly results from the provisions of Art.3 of the Convention and as shown in the Explanatory Report on the Hague Convention, prepared by Eliza Perez-Vera in 1980, in the interpretation of Art.5 (in paragraph 84 of the report), the Convention protects sole and joint custody to the same extent.

A delicate practical issue remains, however, clarifying the notion of habitual residence of the minor because the Hague Convention does not clearly define the meaning of this term.

Only after the courts are clear about the habitual residence of the minors, they can rule on the legality or illegality of the removal of the children and therefore whether it is a case of child abduction. According to the E. Perez-Vera Report "the diversity of the circumstances and the factual situation, specific to each case, makes any attempt to establish a definition as precise as possible from a legal point of view fail."

Not to mention the duration of resolving matrimonial conflicts in which minor children are involved, which is currently between 3 and 5-6 years, which absolutely excludes the application of speed and completely ignores the primary interest of the child.

2. The need to reform the European norm

Internationality and cross-border aspects are what tipped the scales in favour of reforming the norm under discussion.

Thus, "cross-border, things are presented differently, on many levels. If we were to refer to the legislative framework, the aspects of interest multiply in the directions of conflicts of laws, international competence, recognition, and execution of foreign judgments.

The legislation of matter is of an inevitable dynamic. The European regulations follow each other (because of the mandatory and periodic review), and the intervention of the CJEU it is essential because a number of aspects call for interpretation.

Furthermore, in the legal relationships that exceed the scope of the regulations, the provisions of international private law are varied. From judicial divorce to private divorce, from separation from the body, to dissolve the marriage, to the non-regulation of separation from the body, from repudiation (unilateral divorce, in Islamic law) to repudiation of repudiation (at the level of regulation in the system of continental law) - the examples can go on.

The map of the dissolution of marriage is generous, and the element of foreignness offers topics for debate, constantly current, with convergent solutions, but not unanimous (for now)" (<https://lege5.ro>).

This is where the need for reform in the field resides. Regarding the definition of some terms, Regulation no. 2019/1111 takes up the following notions (art. 2) for clarification: judgment, court, authentic document, agreement, Member State of origin, Member State of enforcement, child, parental responsibility, owner of parental responsibility, entrustment, right of visitation, movement or unlawful detention of a child.

3. Entry into force and application of Regulation (EU) 2019/1111

The resolution of situations that fall under the incidence of the reforming normative act is done with reference to the date of August 1, 2022, so that the Regulation will apply only to initiated judicial procedures, authentic documents drawn up or formally registered and agreements registered on or after August 1, 2022 .

At the same time, Regulation (EC) no. 2201/2003 continues to apply to judgments handed down in legal proceedings initiated, authentic instruments drawn up or formally registered and agreements which became enforceable in the Member State where they were concluded before 1 August 2022 and which fall within the scope of the regulation mentioned.

Another stage in the application of the reform is represented by the preparation and presentation of a report that analyses the issues resolved by the application of the new provisions.

Thus, by August 2, 2032, the European Commission will present to the European Parliament, the Council and the European Economic and Social Committee a report on the ex-post evaluation of this regulation, based on the information provided by the member states. The report is accompanied, as appropriate, by a legislative proposal.

The intermediate stage is August 1, 2022- August 2, 2025. Thus, starting from August 2, 2025, the member states will collect and make available to the European Commission, upon request and if available, relevant information for evaluating the operation and application of this regulation regarding:

a) the number of decisions handed down in matrimonial matters or in the matter of parental responsibility in which jurisdiction was based on the grounds set out in the reforming Regulation

b) regarding requests for the execution of a judgment

Except for Art. 100 paragraph (2), Regulation (EC) no. 2201/2003 is repealed from August 1, 2022. Regarding entry into force, art. 105 provides that Regulation (EU) no. 2019/1111 enters into force on the twentieth day from the date of publication in the Official Journal of the European Union.

Its effective application takes place from 1 August 2022, except for Articles 92, 93 and 103, which apply from 22 July 2019.

The reformation regulation does not apply in the following areas: establishing or contesting filiation, the decision on adoption and the measures preceding it, as well as the annulment and declaration of the nullity of the adoption, the name and surname of a child, emancipation, the maintenance obligation, fiduciary deeds and successions, the measures taken because of criminal acts committed by children.

Regarding aspects related to marriage, we should also mention Regulation (EU) no. 1259/2010 (Regulation (EU) no. 1259/2010 of the Council of 20 December 2010 implementing a form of consolidated cooperation in the field of law applicable to divorce and legal separation, OJ L 343, 29.12.2010, p. 10–16) which in turn, refers to Regulation (EC) no. 2201/2003 (now repealed).

Both dealt with issues related to marriage: the first concerned the applicable law (divorce, separation from the body), the second referred to the competence, recognition, and execution of foreign judgments (in matrimonial matters and in matters of parental responsibility). The first Regulation (art. 2) provides that its provisions do not affect Regulation (EC) 2201/2003 (Art.3, lit. a, i-vi).

The two normative acts were complementary, in the sense that the aspects they regulate/were regulating make up a whole.

The full picture of the issues involves the applicable law, jurisdiction, recognition, and enforcement of foreign judgments (conflicts of laws and conflicts of jurisdiction).

Finally, the reforming Regulation does not apply in the following areas: establishing or contesting filiation, the decision on adoption and the measures preceding it, as well as the annulment and declaration of the nullity of the adoption, the name and surname of a child, emancipation, the maintenance obligation, fiduciary acts and successions, the measures taken as a result of the criminal acts committed by children.

Points 4) and 5) of the Preamble of the reforming Regulation refer to the autonomous interpretation of the notion of civil matter in accordance with the jurisprudence of the CJEU.

The interpretation will be in the sense that "civil matters" can include measures that, from the legal point of view of a member state, would belong to public law - all requests, measures, or decisions in the matter of parental responsibility, plus the civil procedures and decisions that result following them, as well as authentic documents and certain extrajudicial documents in matrimonial matters and in matters of parental responsibility.

Added to this interpretation are requests, measures, or decisions, as well as authentic documents and certain extrajudicial agreements regarding the return of a child under the 1980 Hague Convention, which are not substantive procedures in the matter of parental responsibility but are closely related to it.

4. Divorce, legal separation, annulment of marriage

The reforming regulation establishes uniform rules regarding jurisdiction in matters of divorce, legal separation, and annulment of marriage, on the one hand, and in disputes related to parental responsibility with an international element, on the other.

According to Art.3, either the courts of the member state in whose territory it is located, or the courts of the citizenship of the two spouses are competent to decide on issues regarding divorce, legal separation, and annulment of marriage (Art.3, lit. a, i-vi).

In the case of competence in the matter of parental responsibility, the courts of a member state are competent in the matter of parental responsibility regarding a child who has habitual residence in the respective member state at the time of referral to the court. (Art.7 par.1).

It is about the right of visitation and the illegal movement or detention of a child.

The courts of the Member State in which the child had his habitual residence immediately before his unlawful removal or detention have jurisdiction, so they remain competent until the child acquires his habitual residence in another Member State.

The international kidnapping is regulated by Articles 22-29, Chapter III.

These provisions complement the 1980 Hague Convention as follows "where a person, institution or any other body which considers that there has been a violation of the rights relating to entrustment applies, either directly or with the assistance of a central authority, to the court of a Member State to give a judgment on the basis of the Convention of the Hague of 1980 to order the return of a child under the age of 16 who has been wrongfully removed or retained in a Member State other than the Member State in which the child had his or her habitual residence immediately before his wrongful removal or retention, Articles 23-29 and Chapter VI of this Regulation apply, supplementing the Hague Convention of 1980."

5. Issuance of proof certificates

The reforming regulation imposes the procedure of issuing by the court a number of nine certificates attesting to legal situations.

- evidentiary certificate issued by the court following a decision refusing the return of a child/refusal of return - Annex I (art. 13 para. 1 letter b and/or art. 13 para. 2 of the 1980 Hague Convention)
- certificate regarding decisions in matrimonial matters - Annex II
- certificate regarding decisions on parental responsibility - Annex III
- certificate regarding the decision ordering the return of a child to another member state and any other provisional measure, including insurance, according to the 1980 Hague Convention and Art. 27 para. 5 of the reforming Regulations - Annex IV
- certificate regarding certain decisions granting the right to visit - Annex V
- certificate relating to certain decisions regarding the substantive resolution of the issue of custody of the child issued pursuant to Art. 29 para. 6 of the Regulation and which involves the return of the child - Annex VI
- certificate regarding the lack or limitation of the enforceability of certain decisions granting visitation rights or involving the return of the child that were certified in accordance with Art. 47 of the Regulation - Annex VII
- certificate regarding an authentic document or an agreement regarding divorce or legal separation - Appendix VIII
- certificate regarding an authentic document or an agreement in the matter of parental responsibility - Annex IX

The reform proposed by the European Commission imposes "the conditions that must be fulfilled by a request for return, the trial procedure and the execution of a return solution, as well as the effects that such a procedure has on national processes.

Even if the procedure itself is not extremely complicated, it requires an analysis of the actual situation, on the one hand, from the perspective of different national legislations, and on the other hand, from the perspective of the 1980 Hague Convention and the Regulation (CE) no. 2201/2003, still valid. "

6. Conclusions

It is evident that the set of legal complications related to the displacement of a child, his return/non-return, his abduction by one of the parents is the consequence of the deterioration of matrimonial relations, whether they result from marriage, from consensual unions or from cohabitation.

On the other hand, the extension of the application of the principle of free movement in the EU states and in the civilized states that have joined the Hague Convention of 1980 does not simplify the practical situation in family life in which the emotional part of the relations between spouses, on the one hand, between parents on the other hand and between parents and their children thirdly comes to determine their behaviour within or outside the legal norms.

The two normative acts - the reforming Regulation and the Convention, to which all the legal acts of the domestic law are added, should ensure increased protection not only for relatively normal situations in which parents separate, but also in those that intervene because of existing crises - refugees from war zones.

The concern of the European legislator is to be welcomed, even if a semantic analysis leads to the conclusion that, in fact, international kidnapping is not defined. It follows from the text of the law (The Hague Convention of 1980) that kidnapping is interpreted in two ways - either as the illegal displacement of a child, or as the refusal to return or his non-return.

As a result, the reformation of the procedures is to be welcomed, including the issuance of proof certificates, but there is still room for optimization.

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