



THE APPLICATION OF ART. 10 OF BRUSSELS II-BIS TO CHILDREN ABDUCTED OUT OF THE EU: THE LAST UK REFERENCE ON FAMILY LAW?

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ABSTRACT: Upon probably the last reference from the UK on Family Law, in *SS* (case C-603/20 PPU ECLI:EU:C:2021:231) the CJEU was asked to rule, on the application of art. 10 of Brussels II-bis where a child, formerly habitually resident in a Member State, is abducted to and becomes resident in a third State. This *Insight* explores the CJEU's reasons for holding that in such circumstances art. 10 has no application and that the Member State does not have jurisdiction for an indefinite period. The *Insight* considers the impact of this decision first, for EU Member States both under Brussels II-bis and its successor, Brussels II-ter, and secondly, for the UK now that it has become a third State. It concludes that from all perspectives, the CJEU decision is a sound and welcome one.

KEYWORDS: Brussels II-bis – jurisdiction – art. 10 – child abduction – third State – residence.

I. INTRODUCTION

Upon what is likely to be last UK reference on Family Law,¹ in *SS*² the CJEU was asked to rule on the application of Brussels II-bis art. 10. The relevant part of that article provides: "In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal

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¹ The UK revoked Brussels II-bis with effect from 23-00 (GMT) 31 December 2020, though its application is preserved for cases still pending on what is called in the UK 'IP completion day': see the European Union (Withdrawal) Act 2018, as amended, and the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/519, reg 3 and reg 8, as substituted by reg 5 of the Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020, SI 2020/1574. The reference was made by Mr Justice Mostyn sitting in the Family Division of the High Court of England and Wales on November 6 2020 in *SS v MCP* [2020] EWHC 2971 (Fam). It is not last UK reference, that distinction goes to reference on tax matters, see *Gallaher Ltd v HM Revenue* [2020] UKUT 0354 (TCC).

² Case C-603/20 PPU, *SS v MCP*, ECLI:EU:C:2021:231.



or retention shall retain their jurisdiction until the child acquires a new habitual residence in another Member State”.

The question asked was whether that article retained “jurisdiction, without limit of time, in a Member State if the child habitually resident in that Member State was wrongfully removed to (or retained in) a non- Member State where the child, following such removal (or retention), in due course became habitually resident?”

The facts giving rise to this question were simple enough. The parents (who were a couple but not married to each other) were both Indian citizens with leave to remain in the UK. Their child, P, a UK citizen, was born in the UK in 2017. Under English law both parents had parental responsibility for P. In October 2018, the mother went with P to India. Although the mother later returned to England, P stayed in India where she lived with her maternal grandmother and apart from a short stay in April 2019 had not set foot in the UK. The father sought P’s return and a ruling on access. The mother challenged the jurisdiction of the court. The referring court considered it was necessary to determine whether it had jurisdiction under Brussels II-bis. In that regard it found that that (1) it was very probable that the mother’s conduct amounted to a wrongful removal or retention, (2) at the time it was seised, P was habitually resident in India and (3) the mother had at no time unequivocally accepted the jurisdiction of the court in England and Wales. On this basis it decided that its jurisdiction could not be founded on art. 8 or art. 12(3) of Brussels II-bis.

Before this reference, there was domestic “authority”, namely, the Court of Appeal decision, *Re H*,³ to the effect that by art. 10, on facts such as the above, the court does retain jurisdiction without limit. This decision was reached upon the basis that art. 10 comprised two elements: first that it ensures that in the case of a child’s wrongful removal or retention, the courts of the Member State where the child was habitually resident immediately before that wrongful removal or retention retain jurisdiction for a period, and, secondly, it makes provision for that retained jurisdiction to come to an end. In the court’s view, on its wording, retained jurisdiction only comes to an end when the child becomes habitually resident in another Member State. In support of that conclusion the court commented that elsewhere in the Regulation it could be seen “that there are situations in which it is deemed that it is in the child’s best interests for a Member State to have jurisdiction rather than the matter being entrusted the courts of a third State” and pointed to art. 12 and, in particular, to art. 12(4) relating to children with their habitual residence in a State that is neither a Member State nor a Contracting State to the 1996 Hague Protection of Children Convention.⁴ In *Re H* the children concerned were wrongfully retained in Bangladesh and had remained there for 6 years. The court

³ *I.e. Re H (Children) (Reunite International Child Abduction Centre intervening)* [2014] EWCA Civ 1101.

⁴ See paras 46-52, per Black LJ. In *Re I (A Child) (Contact Application: Jurisdiction)* [2009] UKSC 10, the UK Supreme Court ruled that Brussels II-bis art. 12 (which makes provision for prorogation of jurisdiction) could apply to a child who is habitually resident outside the EU (in this case, Pakistan). In part this decision relied upon art. 12(4). It may be noted that art. 12(4) has been removed in Brussels II-ter.

held, *exercising its retained jurisdiction*,⁵ that it would dismiss the proceedings, there being no solid reason why in the interests of the children they should be continued.⁶

In the normal course of events the English High Court would have regarded itself as bound by this Court of Appeal authority.⁷ In *SS*, however, the referring court, harbouring doubts as to whether art. 10 can apply to a conflict of jurisdiction between the courts of a Member State and the courts of third State, broke with this practice and made a reference.

II. THE RULING

Contrary to the position taken by the Court of Appeal in England and Wales and, more interestingly, contrary to the Opinion of the Advocate General,⁸ the CJEU ruled that art. 10

“must be interpreted as meaning that is not applicable to a situation where a finding is made that a child has, at the time when application relating to parental responsibility is brought, acquired his or her habitual residence in a third State following abduction to that State. In that situation, the jurisdiction of the court seised will have to be determined in accordance with the applicable international conventions, or, in the absence of any such international convention, in accordance with art. 14 of [Brussels II-bis]”.

The Court’s compelling analysis for making this ruling began with a reminder that when interpreting a provision of EU law, consideration needs to be given not just to its wording but also to its context, the objectives pursued by the rules of which it is a part,

⁵ Black LJ emphasised (at para. 59 *Re H* (2014) cit.) that she was not declining to exercise jurisdiction, pointing out that dismissing proceedings in the exercise of jurisdiction was different to and not to be confused with refusing jurisdiction.

⁶ For a critique of this decision, particularly from the perspective of the interplay between Brussels II-bis and the 1996 Convention, see H Setright, D Williams, I Curry-Sumner, M Gration and M Wright, *International Issues in Family Law* (Jordans Publishing 2015) 233-235.

⁷ See *L v M (Jurisdiction: Repudiatory Retention)*, [2019] EWHC 219 (Fam), in which, in view of *Re H*, the court refused to make a reference on the point. Note also the application of *Re H* (2014) cit. in *Jurisdiction NG v GA*, [2019] EWHC 1412 (Fam), art 10 BIIa.

⁸ See case C-603/20 PPU, *SS v MCP*, ECLI:EU:C:2021:126, Opinion of AG Rantos. Like the referring court, the Advocate General considered art. 10 to have two components, the retaining jurisdiction element and the ending of that retained jurisdiction element. In relation to the latter, the wording clearly pointed to jurisdiction only ending when the child in question becomes habitually resident in another Member State, which is in keeping with the principle of mutual cooperation and respect that applied between Member States but not with third States. Moreover, that interpretation was in line with the EU legislature’s policy of protecting the best interest of the child to deter child abductions between Member States and, in cases of abduction, to obtain the child’s return without delay, and applied the case C-211/10 PPU *Povse* ECLI:ECLI:EU:C:2010:400 paras 43-45, that the abduction of a child by one of its parents, does not entail a change in the court having jurisdiction to rule on parental responsibility, with a view to protecting the best interests of that child. See also the analysis by C Honorati, AA Limanté and I Kunda ‘Jurisdiction in Child Abduction Proceedings’ in C Honorati (ed), *Jurisdiction in Matrimonial Matters, Parental Responsibility and International Abduction* (G Giappichelli, 2017) 92, 106.

and to its origins.⁹ With this in mind, the Court first examined the wording of art. 10, then its context and finally its legislative history. All these considerations pointed to the irresistible conclusion that art. 10 does not confer indefinite retention of jurisdiction in the Member State of origin in a case of an abduction to a third State.

II.1. THE WORDING

According to the Court's analysis, on its wording, art. 10 clearly provides that in the event of abduction courts of the Member State in which the child was habitually resident immediately before the wrongful removal or retention retain jurisdiction but that that jurisdiction is to be transferred to courts of another Member State as soon as the child becomes habitually resident in that State and one of the additional conditions set out in the article is satisfied. Moreover, the additional criteria set out in art. 10(b) relate to a situation which is confined to the territory of Member States. In the Court's view, this structure combined with the fact that the provision refers "Member State" and not simply "State" or "third State" implies that art. 10: "deals solely with jurisdiction in cases of child abduction from one Member State to another".¹⁰

Having pointed to the fact that the article comprises a single sentence such that it is apparent that it forms an indivisible whole, the Court considered that, as a matter of principle, it cannot be read as having two distinct components, one of which separately provides for the indefinite retention of jurisdiction by the courts of a Member in the event of a child's abduction to a third State.¹¹

II.2. THE CONTEXT

The Court observed that art. 10 constitutes a special ground of jurisdiction which is designed to ensure that as between Member States the abductor does not gain a procedural advantage by the abduction. But the child's acquisition of an habitual residence outside the EU leaves no room for the application of the basic rule of jurisdiction under art. 8 (*i.e.* habitual residence in a Member State). Consequently, the rule laid down in art. 10, whereby it is possible to set aside the jurisdiction which could be claimed on the general ground by the courts of the Member State where the new habitual residence has been acquired, loses its *raison d'être* and there is no reason to apply it.

⁹ See C-181/19 *Jobcenter Krefeld* ECLI:EU:C:2020:794 para. 37; and joined cases C-435/16 and C-397/16 *Acacia and D'Amato* ECLI:EU:C:2017:992.

¹⁰ *SS* cit. paras 39-40. In this respect the Court accepted the view expressed by the CJEU judgment of 17 October 2018 in case C-993/18 *PPU UD* ECLI:EU:C:2018:835 para. 33 that art. 10 is dependent upon a potential conflict of jurisdiction between courts in a number of Member States.

¹¹ *SS* cit. para. 42. Note: this is directly counter to the Advocate General's Opinion, para. 52.

In any event, special grounds of jurisdiction should be interpreted restrictively and not go beyond the situations expressly envisaged by the Regulation.¹² That is another reason for not interpreting art. 10 by taking into account only one part of its wording as to apply that part independently.

II.3. THE LEGISLATIVE HISTORY

In the Court's view, it is apparent from the legislative history of Brussels II-*bis* that while "the EU legislature wanted to establish strict rules with respect to child abductions within the European Union [...] it did not intend those rules to apply to child abductions to a third State".¹³

As it pointed out, abductions to a third State were already covered by the 1980 Hague Abduction Convention to which all Member States were bound at the time of the Proposal leading to the conclusion of Brussels II-*bis*.¹⁴ Further, the intention not to apply EU rules to abductions to third States could be gleaned from the explanatory memorandum to that Proposal in which the Commission presented a proposal to authorise Member States to sign the 1996 Hague Protection of Children Convention "for the purpose of covering international situations".¹⁵

The Court also pointed to the explanatory statement of the Report of the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on the Commission's Proposal for a revised Brussels II Regulation, in which the rapporteur welcomed:¹⁶ "the Commission proposal as an instrument which may provide a more integrated system within the European Union and operate alongside the 1980 and 1996 Hague Conventions in the international sphere. It should not be forgotten that many, if not most, of the problems concerning child abduction and visiting rights arise in relation to non-EU countries".

In the Court's view, all this showed that the desire of the EU legislature was "to ensure the co-existence of the EU body of rules in relation to child abduction with the body of rules established by international conventions".

¹² Applying *inter alia*, case C-45/13 *Kainz* ECLI:ECLI:EU:C:2014/7.

¹³ *SS* cit. para. 50.

¹⁴ Communication COM(2002) 222 final of the European Commission of 3 May 2002, proposal for a Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance, 155.

¹⁵ COM(2002) 222 final cit. 3. An EU procedure for ratification etc was subsequently authorised by the Decision 2008/431/EC of the European Council of June 2008 and with Italy's ratification coming into force on 1 January 2016, the 1996 Convention is in force in all Member States.

¹⁶ See the explanatory statement of the report of the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on the Commission's Proposal for a revised Brussels II Regulation (7 November 2002, A5-03585/2002) 19.

Having established the legislative intent for the EU rules to co-exist with the Conventions, the Court then examined the impact on those Conventions of interpreting art. 10 as conferring indefinite retention of jurisdiction in the Member State of origin in a case of an abduction to a third State. It noted that such an interpretation would deprive arts 7(1) and 52(3) of the 1996 Convention of having an effect. art. 7 is the 1996 Convention's equivalent provision to art. 10 of the Regulation and like the latter, the former provides for the transfer of jurisdiction to the court of the Contracting of the child's new habitual residence provided certain conditions (viz the passage of time together with acquiescence or inaction by the holder of rights of custody, the child having become settled in his or her new environment) have been satisfied. But, that possibility of transfer of jurisdiction would be "definitively precluded" if courts of a Member State were to retain indefinitely their jurisdiction. Further, retention of jurisdiction would be contrary to art. 52(3) which, as the Court put it,¹⁷ "prohibits rules agreed by one or more contracting States on matters regulated by that convention...from affecting, in the relationship of those States with other contracting States, the application of that convention".

In short, the Court concluded that the consequence of interpreting art. 10 of the Regulation as providing indefinite jurisdiction:¹⁸ "would be that Member States, which have all ratified or acceded to the 1996 Hague Convention, would find themselves compelled to act, pursuant to EU law, in a way that was incompatible with their international obligations".

Not only is the indefinite retention interpretation of art. 10 incompatible with the application of the 1996 Convention, it would also disregard the logic of the mechanism of prompt return or non-return under the 1980 Hague Abduction Convention. As the Court observed¹⁹

"If the jurisdiction of the courts of the Member State of origin were to be retained unconditionally and indefinitely, notwithstanding the fact that the abduction to the third State has, in the meantime, met, inter alia, acquiescence on the part of any person, institution or other body holding rights of custody, and without there being any condition allowing for account to be taken of the specific circumstances characterising the situation of the child concerned, or for the best interests of that child to be protected, that retention of jurisdiction would prevent the court best placed to assess the measures to be adopted in the best interests of the child from being able to hear applications in relation to such measures".

In any event, such an interpretation would be incompatible with a fundamental objective of Brussels II-*bis* itself, namely that of respecting the best interests of the child by giving priority of jurisdiction upon the basis of proximity.²⁰ Drawing again on the ex-

¹⁷ *SS* cit. para. 55.

¹⁸ *Ibid.* para. 56.

¹⁹ *Ibid.* para. 60.

²⁰ Case C-499/15 *W and V* ECLI:EU:C:2017:118 para. 15 and case C-393/18 *PPU UD* ECLI:EU:C:2018:118 para. 48.

planatory memorandum to the Commission's Proposal,²¹ the Court pointed to the desire of the EU legislature to balance with respect to jurisdiction, the need to prevent the perpetrator of the abduction from reaping the benefit of his or her wrongful act with the value of allowing the court that is closest to the child to hear actions relating to parental responsibility.

The Court concluded, surely correctly, that to be consistent with all the aforementioned considerations, art. 10 cannot be interpreted as conferring indefinite jurisdiction in the Member State of origin in a case of an abduction to a third State. To the contrary, in such a situation, art. 10 has *no* application and instead the jurisdiction of a court of a Member State seised must be determined either in accordance with the applicable international Convention, or, where no Convention is applicable, in accordance with art. 14 of the Regulation.²²

III. THE SIGNIFICANCE AND RELEVANCE OF THE RULING

III.1. THE IMPACT OF *SS* FOR MEMBER STATES

For Member States the immediate impact of the ruling in *SS* is to confine the application of art. 10 to abduction cases between Member States other than Denmark (which is not bound by Brussels II-bis).²³ In the case of abductions to third States, art. 10 has no application. Instead, jurisdiction will be governed by either the 1980 Hague Abduction Convention if the other State involved is a Contracting State to that Convention provided that in the case of accessions, that State's accession has been accepted by the Member State involved,²⁴ or the 1996 Hague Protection of Children Convention to which the other State is a Contracting State.²⁵ If, as in *SS* itself, the third State is not party to either of the Conventions, then the court of the Member State seised must look to its own private international law to determine jurisdiction, the application of which is preserved by art. 14 of Brussels II-bis, in cases where no Member State has jurisdiction under Arts 8-13, which will be the case where the child is neither habitually resident nor present in the seised State.²⁶

²¹ COM(2002) 222 final cit. 12.

²² Art. 14 is further referred to below.

²³ See Brussels II-bis art. 2(3).

²⁴ In this respect the 1980 Hague Abduction Convention is different to other Hague Conventions in that new accessions only come into force with an existing Contracting State when it is accepted by the latter State. But EU Member States bound by Brussels II-bis (*i.e.* all such States except for Denmark), do not have individual competence to accept accessions (see Opinion 1/13 *Adhésion d'États tiers à la convention de La Haye* ECLI:EU:C:2014:2303). Instead there is now a developed system for the collective acceptance of accessions.

²⁵ Under this Convention, accessions take effect in all Contracting States unless specifically objected to by an individual existing Contracting State which will prevent it coming into force between those States.

²⁶ For discussion of art. 14, see *e.g.* A Limante and I Kunda 'Jurisdiction in Parental Responsibility Matters' in C Honorati (ed.), *Jurisdiction in Matrimonial Matters*, cit. 89-91.

With effect from 1 August 2022, Brussels II-*bis* will be replaced by Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and international child abduction (recast) (“Brussels II-*ter*”). But this will not mean that *SS* will cease to be of relevance. To the contrary, art. 10 of Brussels II-*bis* will be replaced by art. 9 of Brussels II-*ter* which, save in one respect (to be discussed shortly), is identically worded, while residual jurisdiction will be similarly provided for by art. 14 of Brussels II-*ter*.

The difference between art. 9 of Brussels II-*ter* and art. 10 of Brussels II-*bis* is that the former is made subject to the parties’ freedom (under Brussels II-*ter* art. 10)²⁷ to agree that a particular court of Member State with which the child has a substantial connection should have jurisdiction. A “substantial connection” for these purposes can be satisfied by the child being a national of the chosen Member State. But that choice must be freely agreed upon or expressly accepted *and* it must be in the interests of the child for the jurisdiction to be exercised.²⁸ Given the ruling in *SS*, that art. 10 of Brussels II-*bis* only applies to intra-EU abductions, it must be assumed that art. 9 of Brussels II-*ter* is similarly confined, though the matter might have to be tested with regard to making agreements on jurisdiction. But even if art. 9 can be applied in this respect notwithstanding an abduction to a third State, such agreements are unlikely to be common, even if they have been made, it must still be in the child’s best interests to exercise jurisdiction, which must surely become increasingly questionable the longer the child lives in the third State.

III.2. THE IMPACT OF *SS* FOR THE UK

The immediate impact of the ruling in *SS* for the UK is, of course, that the case will return to the High Court in London for a ruling in the light of the CJEU decision.²⁹ Given the facts, that will mean applying, via art. 14, national law. But in that respect the judge has already signalled that while technically he may have jurisdiction under what is known under English law as the inherent jurisdiction given that the child in question has British citizenship,³⁰ in his view it “would be wholly unprincipled, and a wrong exercise of the court’s powers, for me to make orders on the father’s application pursuant to the

²⁷ Art. 10 of Brussels II-*ter* will replace art. 12 of Brussels II-*bis*.

²⁸ See art. 10(1)(a) and (b) of Brussels II-*bis*.

²⁹ At the time of writing, the hearing is scheduled to take place in June 2021.

³⁰ The inherent jurisdiction is an ancient non-statutory jurisdiction derived from the sovereign’s obligation as *parens patriae* to protect the person and property of his subjects wherever they may be, particularly those such as children who are unable to look after themselves. In other words, jurisdiction is based on allegiance to the Crown rather than nationality as such. See N Lowe and R White *Wards of Court* (Barry Rose 1986) ch 1. Although the inherent jurisdiction continues to exist (see the UK Supreme Court decisions, *A v A (Children: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] UKSC 60 and *Re NY (A Child) (Reunite International intervening)* [2019] UKSC 49) in terms of basing jurisdiction upon allegiance, there needs to be compelling reasons for doing so.

High Court's inherent powers in circumstances where he has not established jurisdiction under either Brussels 2 or sections 1–3 Family Law Act 1986".³¹

Another result of the CJEU ruling is that it reverses the earlier Court of Appeal decision³² that under art. 10 the court retains jurisdiction indefinitely if the child is abducted to a third State. But now that the UK has revoked Brussels II-bis, the significance of that reversal is largely of historic interest since a UK court is no longer bound to apply art. 10 in any event. Instead, on facts such as those arising in *SS* where no international instrument comes into play, the court will look to its national law to determine jurisdiction, which it is now bound to do regardless of the CJEU ruling. However, this is not to say that *SS* has no continuing significance for the UK, to the contrary, it will take the benefit of the ruling *as a third State* that it has now become.

The UK is a Contracting State to the 1996 Hague Protection of Children³³ as are all EU Member States. But because it is also a third State, the ruling in *SS* is critical to the operation of the 1996 Convention in cases where the child is abducted to the UK from a Member State in which the child was habitually resident immediately before the wrongful removal or retention. *SS* prevents the Member State having indefinite jurisdiction and instead art. 7 of the 1996 Convention will operate to transfer jurisdiction to the UK court once the child has become habitually resident there and the other criteria set out in that article³⁴ are satisfied. Consequently, any subsequent measures directed to the protection of person (or property) of the child must be recognised and enforced according to the terms of the Convention.

IV. SOME CONCLUDING REMARKS

The Court's decision in *SS* is a welcome one. Confining the application of art. 10 to cases arising between Member States ensures that there is a harmonious relationship between Brussels II-bis and its successor, Brussels II-ter, both with the 1980 Hague Abduction Convention and the 1996 Hague Protection of Children Convention. From the UK's perspective this outcome transforms what at best was of limited application in the particular case and an historical footnote on the correct application of art. 10, to a decision that has a lasting legacy for the application particularly of the 1996 Hague Protection of

³¹ *SS v MCP* [2020] EWHC 2971 (Fam) cit. para. 45.

³² *I.e. Re H (Children) (Reunite International Child Abduction Centre intervening)* cit.

³³ It may be of interest to note that the Private International Law (Implementation of Agreements) Act 2020 amended the Civil Jurisdiction and Judgments Act 1982, so as to directly incorporate the Convention into UK domestic law. Previously, the UK had treated the Convention as an EU Regulation (such that it became directly effective) through the mechanism provided by the European Communities Act 1972 s 2(2). That Act was repealed by the European Union (Withdrawal) Act 2018 on IP completion day.

³⁴ *I.e.* those set out in art. 7(1)(a) and (b), referred to earlier.

Children Convention. In this respect the outcome is important, too, for Member States since a not insignificant proportion of abduction cases are with the UK.³⁵

There may be some who view the decision in *SS* as moving too far in favour of the abducting parent since it permits the unlawful relocation of the child to a different country to deprive the Member State of the child's former habitual residence of jurisdiction under the Regulation. There is indeed a delicate balance between deterring abduction and safeguarding and promoting the child's best interests, but it is doubtful that that balance is better drawn by interpreting art. 10 as giving Member States indefinite jurisdiction where the child is abducted to a third State. To the contrary, from the child's point of view, while his or her best interests are generally best served by being *promptly* returned to the State of habitual residence, as time passes that starting point becomes steadily less appropriate and, in jurisdictional terms, once the child becomes habitually resident in another State (whether a Member State or not), it is the latter court that is best placed to make long-term decisions about the child's future.

One final observation: although the reference in *SS* did not concern the meaning of habitual residence, that concept is crucial to the operation not just to art. 10 of Brussels II-bis (art. 9 of Brussels II-ter) but also to the operation of art. 7 of the 1996 Hague Protection of Children Convention and to the 1980 Hague Abduction Convention. Given the importance of all these instruments to work in harmony, it is clearly desirable that the test of what amounts to "habitual residence" is the same. In that respect note might be taken of the UK position³⁶ where not only is this the case but also that that test is the so-called "integration" test as established by the CJEU in the *Mercredi* case.³⁷

³⁵ According to the global statistical study of all applications made in 2015 under the 1980 Hague Abduction Convention conducted by N Lowe and V Stephens, 67% of all Convention applications for the return of the child received by England and Wales were made by EU Member States bound by the Brussels II-bis Regulation. See N Lowe and V Stephens, 'Preliminary Documents n. 11A (Revised, February 2018) and 11B (Revised, February 2018)' www.hcch.net.

³⁶ See the UK Supreme Court decision, *A v A (Children: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] UKSC 60 para. 54(ii), per Baroness Hale.

³⁷ Case C-497/10 PPU, *Mercredi v Chaffe* ECLI:ECLI:EU:C: 2010:829.