

CHAPTER 10: Cooperation between Central Authorities in Matters of Parental Responsibility

Vesna Lazić and Wendy Schrama

Contents

1. Introduction	284
2. Designation of Central Authorities – Article 53	284
3. Functions of the Central Authorities – Article 54	285
4. Cooperation between Central Authorities in different Member States in cases relating to parental responsibility – Article 55	286
4.1 Difficulties in application – National Reports	289
4.1.1 National Reports on the organisation and cooperation of Central Authorities ..	289
4.1.2 National Reports on the absence of a time frame	291
4.2 Difficulties in application – CJEU case law	292
5. Placement of a child in another Member State – Article 56	293
5.1 Difficulties in application – relevant literature	295
5.2 Difficulties in application – CJEU case law	297

1. Introduction

Cooperation between Central Authorities in matters of parental responsibility is dealt with in Chapter IV of the Brussels IIbis Regulation. Just like the Regulation, the 2016 Commission's Proposal in the title of Chapter V illustrates that the legislator opted for restricting it to parental responsibility, where this cooperation contributes to realising the aims of free movement.¹ In this respect, judicial cooperation is essential to target the aim of free movement for international couples.² Central Authorities, which have to be designated by each Member State according to Article 53, play a crucial role in the application of the Regulation. The cooperation between the Central Authorities of the Member States aims to improve the application and enhance the effectiveness of the Regulation.³ This is done by ensuring that jurisdiction in matters of parental responsibility is assigned to the most convenient court and that decisions taken by a court in one Member State are effective in other Member States, as well as by promoting an amicable resolution of family disputes.⁴ That could create synergy in many ways. It also follows from the Practice Guide 2015 that Member States have to provide for sufficient financial means and training for the personnel of these Central Authorities.⁵ In this context the 1996 Hague Convention is relevant: both international instruments aim at effective cooperation in a cross-border context. The cooperation provisions in the 1996 Hague Convention are more detailed and provide more clarity concerning the tasks of the Central Authorities. For children with their habitual residence in an EU Member State the provisions of the Regulation prevail over the more elaborate 1996 Hague Convention rules. For most EU Member States, the Central Authorities designated pursuant to the Brussels IIbis Regulation are the same as those under the 1996 Hague Convention (see *infra* in this Chapter, under 4.1.1 '*National Reports on the organisation and cooperation of Central Authorities*').

2. Designation of Central Authorities – Article 53

According to Article 53 of the Regulation, all Member States are under an obligation to designate at least one Central Authority to assist with the application of the Regulation. It is required that Member States specify the geographical or functional jurisdiction of each authority when a Member State has assigned more than one authority. In the Practice Guide 2015 it is stressed that the authorities should ideally coincide with the already designated authorities that are engaged in applying the 1980 Hague Child Abduction Convention so that they can benefit from the experiences acquired in child abduction cases.⁶ However, this is not the case in Bulgaria, Hungary, Italy, Lithuania and the UK in relation to Gibraltar.⁷

¹ Magnus/Mankowski/Pinheiro, *op. cit.*, Article 43, note 2.

² Setright, *et. al.*, *op. cit.* p. 166.

³ Magnus/Mankowski/Pinheiro, *op. cit.*, Article 54, note 3; Župan, M., '*Chapter 10 Cooperation of Central Authorities*', in Honorati, C. (ed.) *Jurisdiction in matrimonial matters, parental responsibility and abduction proceedings. A Handbook on the Application of Brussels IIa Regulation in National Courts* (1st edn, Giappichelli and Peter Lang 2017), p. 268-271.

⁴ Recital 25 of the Brussels IIbis Regulation.

⁵ Practice Guide 2015, p. 85.

⁶ *Ibid.*, p. 83. See also Rauscher, T., *Europäisches Kollisions – und Zivilprozessrecht*, (vol. I) (3rd edn, Otto Schmidt Verlag 2011), Article 53, note 1.

⁷ See overview provided in, Župan, *op. cit.*, p. 273.

According to Article 67, Member States are to communicate within 3 months following the entry into force of the Regulation the names, addresses and means of communication for the Central Authorities that they have designated pursuant to Article 53. The same obligation applies regarding the languages that are accepted for communications under Article 57(2).⁸ In most Member States, the Ministries of Justice function as Central Authorities.⁹

3. Functions of the Central Authorities – Article 54

Article 54 assigns a very general task to the Central Authorities. The authorities are under a duty to provide information on national laws and procedures, to take measures to improve the application of the Regulation and to strengthen cooperation. This task incorporates a duty to promote cooperation within the borders of a Member State.¹⁰ For this purpose the European Judicial Network in civil and commercial matters will have to be used, pursuant to Article 54.¹¹ The European Judicial Network is composed of contact points designated by the Member States, central bodies and the Central Authorities. The contact points are available to other contact points and to local judicial authorities in their Member State to assist them in resolving cross-border issues with which they are confronted. They also provide information to facilitate the application of the laws of the other Member States. The contact points provide for practical assistance to the authorities in a particular Member State. In addition, they communicate regularly with the contact points in other Member States as provided for in the legal instruments in the area of judicial cooperation in civil and commercial matters. The Network has to provide support to the Central Authorities and to facilitate relations between different courts and with the legal professions.¹²

In addition to this general task, the Central Authorities also have specific tasks of providing information and assistance in matters relating to parental responsibility, both to institutions such as courts and administrative bodies and to parents.¹³ The Central Authorities have to assist in a number of scenarios and to collect and provide information on various matters to parents, courts or other relevant bodies. The topics specified in Article 55 concern information about the situation of the child, including any pending procedures or decisions that may be taken concerning the child. The Central Authorities also have to inform and assist parents who seek the recognition or the enforcement of orders, in particular those relating to rights of access and the return of the child. They also facilitate communication between the courts, and they provide information and assistance to the courts in the context of Article 56. Promoting amicable settlements through, for instance, family mediation is yet another task of the Central Authorities.

⁸ This information can be found at: https://e-justice.europa.eu/content_matrimonial_matters_and_matters_of_parental_responsibility-377-en.do.

⁹ Župan, *op. cit.*, p. 271-272.

¹⁰ Corneloup, S., *et al.*, 'Children on the move: a private international law perspective' (Directorate General for Internal Policies of the Union Policy Department for Citizens' Rights and Constitutional Affairs, PE 583.158-June 2017), p. 30.

¹¹ Practice Guide 2015, p. 83.

¹² Judicial cooperation in civil matters in the European Union, a guide for legal practitioners, p. 111, <http://ec.europa.eu/justice/civil/files/civil_justice_guide_en.pdf>.

¹³ Župan, *op. cit.*, p. 278-281.

The provisions on cooperation between the Central Authorities in matters of parental responsibility are essential for the effective application of the Regulation. The Central Authorities must, for example, collect and exchange information on the situation of the child in connection with custody or proceedings on the return of the child, assist holders of parental responsibility to have their judgments recognised and enforced especially concerning access rights and the return of the child, as well as to facilitate mediation. The Central Authorities also meet regularly within the framework of the European Judicial Network in order to exchange views on their practices, as well as to discuss ongoing cases. Cooperation between the Central Authorities, in particular in bilateral discussions, has proved very useful in connection with cross-border child abduction cases. As for these cases, the Stockholm Programme mentions expressly that, apart from effectively implementing existing legal instruments in this area, the possibility to use family mediation at the international level should be explored, taking thereby account of good practices in Member States. Accordingly, a working group created within the framework of the European Judicial Network has been mandated with proposing efficient means to improve the use of family mediation in cases of international parental child abduction.¹⁴

4. Cooperation between Central Authorities in different Member States in cases relating to parental responsibility – Article 55

Article 55 provides that the Central Authorities shall, upon a request from a Central Authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of the Regulation. As one of these tasks is to provide information, in this context issues of data protection may arise. Article 55 recognises that each Member State is likely to have data protection laws which impact on its powers to exchange information under the Regulation.¹⁵ Article 55 distinguishes between a number of situations in which a request for information has been received by the Central Authority. Central Authorities have different tasks, but it is not always clear what these entail. Important is that the functioning of the Central Authorities depends on national legislation and implementation policies. As a result, there are substantial differences between Central Authorities, ranging from being an administrative tool for the exchange of information and documents to systems where the Central Authority may act as a party.¹⁶ It is not clear under the current provision whether Central Authorities may directly communicate with foreign social or local authorities.¹⁷

Subparagraph (a) concerns the specific task of collecting and exchanging information on the situation of the child, as well as information about previous court orders made in relation to a child who was or has been the subject of proceedings in another Member State.¹⁸ There is

¹⁴ Council document 16121/10, JUSTCIV 194, of 12 November 2010, Conclusions of the ministerial seminar organised by the Belgian Presidency concerning international family mediation in cases of international child abduction, available at <http://register.consilium.europa.eu>.

¹⁵ Setright, *et. al.*, *op. cit.*, p. 166.

¹⁶ Župan, *op. cit.* p. 277. Jonker, M., Abraham, M., Jeppesen de Boer, C., Van Rossum, W. and Boele-Woelki, K., *Internationale kindertvoering, De uitvoeringspraktijk van inkomende zaken in Nederland, Engeland & Wales, Zweden en Zwitserland* (Boom Juridische uitgevers 2015, English summary), p. 167-174.

¹⁷ Župan, *op. cit.* p. 278.

¹⁸ Setright, *et. al.*, *op. cit.*, p. 166; Magnus/Mankowski/Pinheiro, *op. cit.*, Article 55, note 2.

not much guidance as to what the Central Authorities are expected to do in this respect. Article 55(a) refers only to ‘the situation of the child, any procedures under way and decisions taken concerning the child’. Holders of parental authorities and Central Authorities can ask for information, but courts are not listed expressly, leaving room for different interpretations.

Subparagraph (b) describes the duty of providing information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory. This provision contributes to legal protection of parents, who are not familiar with these often complex legal matters.¹⁹ The working methods of the Central Authorities are set out in Article 57 of the Regulation. In this context, reference should also be made to Article 77(1) which requires the holders of parental responsibility in this situation to attach to their request for assistance the relevant certificate provided for in Articles 39, 41(1) or 42(1) and all available information which is of relevance to the enforcement of the order.²⁰

Subparagraph (c) is particularly important in situations where a transfer of proceedings to a court in another country is being considered. This provision regards the facilitating of court-to-court communications, especially in connection with Article 11(6) and (7) in cases where an order for non-return has been ordered by the court of the State in which the child has been wrongfully removed or retained. The same holds true in cases regarding Article 15(c) involving the transfer of a case from one court to another.²¹ In such situations it will be necessary to obtain information that will assist the court in determining whether the transfer of proceedings would be in the child’s best interests and to ascertain the willingness of the Member State in question to accept jurisdiction.²² The Central Authorities also assist in obtaining translations of documents and examining the jurisdiction of the courts in other Member States in these types of cases, serving as a link between the national courts and the Central Authorities of other Member States.²³ For the interpretation of subparagraph (c) the judgment in case A²⁴ is relevant. The CJEU has held that the protection of the best interests of the child may require the national court to inform the court of another Member State having jurisdiction in matters of parental responsibility that it has taken provisional measures pursuant to Article 20, or when it has declared of its own motion that it does not have jurisdiction. This information may be provided directly or through the Central Authorities.

Article 55(d) provides that the Central Authorities shall assist courts in proceedings to be followed in cases concerning the placing of children in another Member State under Article 56.²⁵ When a child is to be placed in foster care or institutional care in another Member State, a request for information is necessary to ascertain what facilities are available and whether the competent authority will provide its consent to the placement pursuant to Article

¹⁹ Župan, *op. cit.*, p. 281-282.

²⁰ Setright, *et. al.*, *op. cit.*, p. 167.

²¹ Magnus/Mankowski/Pinheiro, *op. cit.*, Article 55, note 4.

²² Setright, *et. al.*, *op. cit.*, p. 167.

²³ Magnus/Mankowski/Pinheiro, *op. cit.*, Article 55, note 4.

²⁴ CJEU Case C-523/07 A. [2009] ECR I-02805.

²⁵ Setright, *et. al.*, *op. cit.*, p. 168. See also: Carpaneto, L., ‘Cross-border placement of children in the European Union’ (Directorate General for Internal Policies Policy Department C: Citizens’ Rights And Constitutional Affairs, European Union, 2016) available at: <http://www.europarl.europa.eu/supporting-analyses>, p. 10.

56. Before issuing a placement order, the court must first consult the Central Authority or another authority in the Member State where the child is to be placed as to whether the intervention of a public authority is needed in that State. If the public authority's intervention in that Member State is required for domestic cases concerning the placement of a child, the placement order can only be made if the competent authority agrees to the placement (Articles 56(1) and 56(2)). In cases where the public authority's intervention is not required for domestic cases of child placement, the placing authority then only needs to inform the Central Authority or the authority having jurisdiction in the Member State where the placement is to take place.²⁶

Lastly, subparagraph (e) may be helpful in cases of parental child abduction in assisting the parties to mediate so as to secure rights of access pending the determination of proceedings for the child's return to the country of his/her habitual residence.²⁷ Mediation can play an important role in child abduction cases to ensure that the child will still be able to see the non-abducting parent after the abduction and, once returned, can continue to see the abducting parent.²⁸ It is important, however, to ensure that the mediation process will not be used to unduly delay the return of the child.²⁹ The Central Authorities do not need to provide a mediator themselves.³⁰

Each Central Authority shall bear the costs of its activities. This applies either in relation to the holder of parental responsibility or other interested parties or in the relationship between the Central Authorities themselves.³¹

The provisions on cooperation between the Central Authorities in matters of parental responsibility have not proved to operate satisfactorily. In particular, experts have reported difficulties in connection with the obligation to collect and exchange information on the situation of the child under Article 55(a). The main concerns relate to the interpretation of this provision, the fact that applications for information have not always been dealt with in a timely manner, as well as difficulties in obtaining translations of the information exchanged. Moreover, significant differences exist between the Member States with regard to the assistance provided by the Central Authorities to holders of parental responsibility who are seeking the enforcement of access rights judgments.³² In the literature, numerous suggestions for improvement have been made.³³ It is an almost unanimous view that the Brussels Ibis

²⁶ Article 56(4) of the Brussels Ibis Regulation.

²⁷ Practice Guide 2015, p. 83, para 7.3.

²⁸ *Ibid.*, p. 43; Župan, *op. cit.*, p. 284; Kruger, *op. cit.*, p. 41-42.

²⁹ Magnus/Mankowski/Pinheiro, *op. cit.*, Article 55, note 8. See also 'Article 11 working group 'the method for processing and hearing incoming return cases under the 1980 Hague Child Abduction Convention in conjunction with Regulation (EC) No. 2201/2003', p. 8.

³⁰ Magnus/Mankowski/Pinheiro, *op. cit.*, Article 55, note 10.

³¹ See also Rauscher, *Europeisches Kollisions- und Zivilprozessrecht*, *op. cit.*, p. 362, note 2.

³² Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 COM (2014) 225 final, para 3.

³³ Pretelli, I., *Child Abduction and Return Proceedings: Directorate General for internal policies policy department C: Citizens' rights and constitutional affairs, Legal affairs*, 'Recasting the Brussels Iia regulation,

Regulation does not give sufficient guidance as to what is to be expected from the Central Authorities. It has been pointed out that the vague description of the cooperation between the Central Authorities has often led to delays or even failures to comply with requests.³⁴ Also, the enforcement of judgments delivered in another Member State was identified as being problematic – judgments are often not enforced or are enforced with significant delays.³⁵ Regarding the unspecific provisions on cooperation, difficulties have been reported in connection with the interpretation of the obligation to collect and exchange information on the situation of the child, including translation issues.³⁶ Other problems concern the lack of resources and staff.³⁷

4.1 Difficulties in application – National Reports

4.1.1 National Reports on the organisation and cooperation of Central Authorities

Although many Central Authorities lack financial resources and have to cope with the problem of a lack of staff, the National Reports do not indicate that problems have arisen because of the Central Authority's working methods or the way in which it is institutionally organised. Amongst the positive aspects the following have been mentioned: a relationship based on trust with the courts, impartiality, efficiency, the necessary expertise and sufficient training/courses on the relevant issues of the Regulation.³⁸

Some National Reporters have stated that the gulf between the Central Authority and the agencies which are in charge of handing out the reports on the state of affairs and filing the cases causes serious delays.³⁹ In this context it is mentioned that it can be difficult to find a balance between causing no unnecessary delay and the aim of being impartial.

Workshop 8 November 2016, Compilation of briefings', p. 12-13; Kruger, T., Enhancing Cross-border cooperation: in: Directorate General for internal policies policy department C: Citizens' rights and constitutional affairs, Legal affairs, 'Recasting the Brussels IIa regulation, Workshop 8 November 2016, Compilation of briefings', p. 37.

³⁴ Župan, *op. cit.*, p. 271-273, 277-278.

³⁵ Impact Assessment.

³⁶ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, COM (2014) 225 final, p. 11; Directorate General for internal policies policy department C: Citizens' rights and constitutional affairs, Legal affairs, 'Recasting the Brussels IIa regulation, Workshop 8 November 2016, Compilation of briefings'.

³⁷ For the lack of resources and staff, see Judicial cooperation in civil matters in the European Union, a guide for legal practitioners, p. 37 <http://ec.europa.eu/justice/civil/files/civil_justice_guide_en.pdf>; Župan, *op. cit.*, p. 273; Pretelli, *op. cit.* p. 12; Fridrich, L., The experience of a national central authority, Directorate General for internal policies policy department C: Citizens' rights and constitutional affairs, Legal affairs, 'Recasting the Brussels IIa regulation, Workshop 8 November 2016, Compilation of briefings', p. 48-49.

³⁸ National Report Austria, question 48; National Report Belgium, question 48; National Report Croatia, question 48; National Report Cyprus, question 48; National Report the Czech Republic, question 48; National Report France, question 48; National Report Germany, question 48; National Report Hungary, question 48; National Report Italy, question 48; National Report Latvia, question 48; National Report Portugal, question 48; National Report Slovenia, question 48; National Report Spain, question 48; National Report the United Kingdom, question 48. The staff members of the Central Authority are given sufficient training/courses on the relevant issues in the Brussels IIbis Regulation.

³⁹ National Report Austria, question 47 and National Report Cyprus, question 47.

Furthermore, it can be derived from the answers in the National Reports that no practical difficulties have been mentioned with regard to internal cooperation within the organisation of the Central Authorities.⁴⁰

As to the question of whether there are any practical difficulties and/or good practices with regard to cooperation between the Central Authority and other authorities/organisations/the judiciary in the Member State, most National Reporters have answered that there is good and active communication between the Central Authority and the judiciary/organisations/other authorities.⁴¹ A majority of the National Reports indicate that there are no difficulties with regard to co-operation with other Central Authorities,⁴² with the exception of the Czech Republic, the Netherlands, Latvia and Sweden.

To sum up, the following major shortcomings can be identified: the inaccurate interpretation of the 1980 Hague Convention and the Regulation causing delays in complying with requests,⁴³ a lack of communication with some Central Authorities,⁴⁴ as well as administrative difficulties such as the translation of documents.⁴⁵

In order to improve the difficulties in connection with translations, the Belgian National Report suggests that attention should be paid to whether or not a Central Authority in the other

⁴⁰ Except for those respondents who did not answer: Bulgaria and Cyprus, and those who did not know based on the available information: Germany and Latvia, all respondents concluded in their National Reports that there are no practical difficulties concerning internal cooperation. This can be found in the answers to question 49.

⁴¹ National Report Austria, question 50; National Report Belgium, question 50; National Report Croatia, question 50; National Report the Czech Republic, question 50; National Report Estonia, question 50; National Report Greece, question 50; National Report Hungary, question 50; National Report Latvia, question 50; National Report Luxembourg, question 50; National Report Malta, question 50; National Report the Netherlands, question 50; National Report Slovenia, question 50 and National Report Sweden, question 50.

⁴² National Report Croatia, question 51; National Report Estonia, question 51; National Report France, question 51; National Report Hungary, question 51; National Report Ireland, question 51; National Report Italy, question 51; National Report Luxembourg, question 51; National Report Malta, question 51; National Report Portugal, question 51 and National Report Slovenia, question 51.

⁴³ National Report the Czech Republic, question 51: the Czech Central Authority has had fairly negative experiences with the services of some foreign Central Authorities and their inaccurate interpretation of the Hague Child Abduction Convention and the Regulation and delays in reactions to requests. In one case, a foreign Central Authority requested, four months after the receipt of a return application, additional documents which were, in the opinion of the Czech Central Authority, irrelevant for return proceedings (confirmation that the father paid maintenance). After some time, more than one year after the receipt of the return application, the foreign Central Authority replied that no return proceedings would be initiated; the applicant (the left-behind parent) was advised to find a lawyer to represent him and to commence return proceedings. In another case, the foreign Central Authority refused to initiate proceedings on contact rights explaining that the 1980 Hague Convention shall only be applicable in urgent cases arising from abduction or another serious circumstance. Some foreign Central Authorities provide information on the situation of the child but only with a considerable delay (in some cases more than six months).

⁴⁴ National Report the Netherlands, question 51. In most cases cooperation with the Central Authorities of other member states can be considered as good, both formally and informally. With the Central Authorities of a few states, however, the cooperation can be considered to be difficult due to a lack of communication with the Central Authorities (late or no response to messages etc.).

⁴⁵ National Report Sweden, question 51. In general, the cooperation is satisfactory, but problems arise occasionally with regard to the translation of documents; National Report Latvia, question 51. There are no specific substantial difficulties with regard to cooperation between the Central Authorities. All of the difficulties experienced are purely administrative – which Central Authority has to provide a translation of the documents, providing a response to the requests takes too long etc.

Member State assists the applicant with the translation of the application into the right language. In this context, the Belgian Central Authority draws attention to the fact that the language to which documents have to be translated depends on the presumed whereabouts of the minor(s). It therefore strongly advises that the Central Authority of the other Member State reaches out to its Belgian Central counterpart with an indication of the supposed whereabouts of the minor(s) before ensuring the translation/informing the applicant about the language to be translated into.

There are two ways in which Central Authorities are organised. Most Member States have one Central Authority for all resolutions, regulations and treaties.⁴⁶ Only a few Member States have Central Authorities that are different bodies than the Central Authority under Brussels IIbis.⁴⁷

4.1.2 National Reports on the absence of a time frame

There is consensus among most National Reporters that a time frame where the Central Authorities are involved in child abduction cases could be useful, as delays tend to favour the abductor and are potentially harmful to the child. The Czech National Reporter notes that the Central Authorities in some Member States reply with a considerable delay and that a time limit in the Regulation might be helpful.⁴⁸ In Italy, the time limit is one of the main problems in the application of the Regulation regarding the best interests of the child. The National Reporter suggests that the terms formulated in Article 11 should be absolutely respected. This might probably be a sufficient measure to prevent unnecessary time lapses, which is a crucial aspect in this matter. The Italian National Report emphasises that the actual duration of appeal procedures is far too lengthy. The Reporter suggests two ways in which the time can be shortened: either by limiting the possibilities for an appeal or by providing for specialised courts with appropriate procedures enabling them to decide within a very short time.⁴⁹

In Latvian national law, both for incoming and outgoing cases, the time frame for the Central Authority is set at 10 working days. In incoming cases, 10 working days after the receipt of the application it shall be sent to the Court and in outgoing cases the application shall be sent to the Central Authority 10 working days after the receipt of the application.⁵⁰

The Luxembourg National Reporter refers to a case where the absence of a time frame was considered to be an obstacle for the return of wrongfully abducted children. In that case, the Dutch Central Authority took seven months to notify the Luxembourg authorities about the

⁴⁶ National Report Austria, question 50; National Report Belgium, question 50; National Report the Czech Republic, question 50; National Report Estonia (except for under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption), question 50; National Report France, question 50; National Report Greece, question 50; National Report Ireland, question 50; National Report Italy, question 50; National Report Latvia, question 50; National Report Malta, question 50; National Report the Netherlands, question 50; National Report Portugal, question 50; National Report Romania, question 50 and National Report the United Kingdom, question 50.

⁴⁷ National Report Croatia, question 50; National Report Lithuania, question 50; National Report Luxembourg, question 50; National Report Slovenia, question 50; National Report Sweden, question 50.

⁴⁸ National Report the Czech Republic, question 39.

⁴⁹ National Report Italy, questions 39 and 40.

⁵⁰ National Report Latvia, question 39.

wrongful removal of three children to Luxembourg. Besides, the left-behind parent only contacted the Dutch Central Authority one year after the children's wrongful removal, with the result that the Court in Luxembourg ruled on the non-return of the children due to the fact that they had already been in Luxembourg for a long period of time.⁵¹ The Luxembourg Central Authority tends to establish restrictive terms in order to avoid any risk of prosecution being avoided.

As to the practice in the Netherlands, it appears that the system which has been developed has only managed to ensure that court proceedings at first instance are completed within the six-week period envisaged by the Commission. This is only the first out of three stages which are available in the Netherlands in the procedure for the return of the child.

In Romania, the absence of a time frame for the activities of the Central Authorities involved in child abduction cases may delay the procedures, but does not significantly affect the results thereof. Under Romanian law, the Central Authority is obliged to promptly examine any request of assistance: it has 10 days from receiving the request to verify that the conditions set out in Article 8(2) of the 1980 Hague Convention are met. Even if the Central Authority refuses to administer the case as provided in Article 27 of the 1980 Hague Convention, the applicant is allowed to seise the competent courts directly.⁵²

The Spanish National Reporter remarks that there are two deadlines established in Article 11(6) and (7) regarding some actions undertaken by Central Authorities, but that the absence of a time frame regarding their own activity in these cases is undesirable. The National Reporter believes that the absence of time frames in general is always negative, above all in matters related to minors, where efficiency in the resolution of cases is imperative for the sake of the best interests of the child. Finally, the National Reporter notes that the establishment of deadlines is useless without financial support and the necessary means, both human and material, to accomplish their tasks.⁵³

4.2 Difficulties in application – CJEU case law

Article 55(c) has been the subject of interpretation by the CJEU in the case of *A*.⁵⁴ The Finnish court submitted a question for a preliminary ruling concerning an obligation to cooperate after a provisional measure had been taken: was there any obligation of cooperation towards the court of the Member State having jurisdiction as to the substance of the matter either directly or through the Central Authority after such a measure had been issued.

The CJEU held that provisional or protective measures cease to apply when the court of the Member State having jurisdiction as to the substance of the matter has taken the measures it considers appropriate. Since provisional or protective measures are temporary, certain circumstances related to the physical, psychological and intellectual development of the child

⁵¹ National Report Luxembourg, question 39; Tribunal d'arrondissement de Luxembourg', no. 149284, 19 December 2012.

⁵² National Report Romania, question 39; Article 8 from Act no. 369/2004 under Romanian Law.

⁵³ National Report Spain, question 39.

⁵⁴ CJEU Case C-523/07 *A*. [2009] ECR I-02805, para 65.

may require early intervention. The need for and the urgency of definitive measures must be determined having regard to the child's circumstances, his/her likely development and the effectiveness of the provisional or protective measures adopted. In that context, the protection of the best interests of the child may require that the national court which has taken provisional or protective measures should inform, directly or through the Central Authority designated under Article 53 of the Regulation, the court of another Member State having jurisdiction on the merits about the measure that has been taken. After such a measure has been ordered, the national court is not required to transfer the case to the court of the other Member State having jurisdiction on the substance. The Court derived this particular duty from Article 55(c), which entails an obligation for the court to inform the court of the other Member State having jurisdiction as to the substance of the matter as to the provisional measure which has been taken.⁵⁵

5. Placement of a child in another Member State – Article 56

It has become progressively clear that in order to protect the best interests of the child, it is necessary to 'tailor' the protection measures to the specific and individual needs of the child in question. In that view, the cross-border placement of children has gradually developed from being perceived as an obstacle to an opportunity, where a care solution available in a State other than the child's State of origin may sometimes better meet the child's specific and individual needs. More precisely, in some cases the best way to meet the specific needs of a vulnerable child might be to move the child from his/her State of origin and to place him/her in another State that accepts this solution.⁵⁶ On the other hand, many issues arise in this complicated area of cooperation, where the rights of particularly vulnerable children are at stake. Therefore, the cross-border placement of children in institutional care or with foster parents demands safeguards in terms of cooperation between the authorities of different Member States in order to avoid children ending up in a legal 'no man's land'. These types of parental responsibility decisions are covered by the special procedure set out in Article 56 of the Regulation. Article 23(g) sanctions a failure to comply with the procedure of Article 56 so as to qualify it as a ground for the refusal of the recognition and enforcement of a judgment.

Article 56 of the Brussels Ibis Regulation and the cooperation system of Article 33 of the 1996 Hague Convention are closely connected. The Brussels Ibis regime has been inspired by the Convention, but there are also differences.⁵⁷ The placement of a child involving two EU Member States is governed by Brussels Ibis. Scenarios where the 1996 Hague Convention's rules will apply is where both of the legal systems involved are parties to the Convention.

There is no definition of placement in the Brussels Ibis Regulation, other than that it relates to the placement of a child in institutional care and with a foster family. The Regulation does not extend to kafala and similar legal constructions. Yet these are included in the

⁵⁵ Dutta and Schulz, 'First Cornerstones of the EU Rules on Cross-Border Child Cases: The Jurisprudence of the Court of Justice of the European Union on the Brussels IIa Regulation From C to Health Service Executive' (2014) 10:1 *Journal of Private International Law*, 1-40, p. 38.

⁵⁶ Carpaneto, 'Cross-border placement of children in the European Union', *op. cit.*, p. 20.

⁵⁷ Miranda, *op. cit.*, p. 36.

1996 Hague Convention. Placement in a family prior to adoption or following a criminal offence committed by the child are not covered by Article 56.⁵⁸ The case law of the CJEU has clarified that the placement of a child in a secure institution providing therapeutic and educational care situated in another Member State, entailing the deprivation of liberty for the child's own protection, falls within the material scope of the Regulation by virtue of this express inclusion. The CJEU has noted, however, that in accordance with the exclusion of measures concerning criminal offences laid down in Article 1(3)(g), such a deprivation of liberty must not be intended to punish the child.⁵⁹ Whether the placement of a child with his/her extended family falls within its scope is not clear, but a study has shown that Article 56 is generally applied to the placement of children with relatives, such as grandparents or aunts/uncles.⁶⁰

Several safeguards are provided by Article 56 of the Regulation which relate to both consultation and consent for the placement. The Regulation distinguishes between Member States where, according to their domestic laws, public authority intervention is required in the context of domestic child placements and Member States where such intervention is not needed. In line with the principle that the cross-border placement of children follows the procedure for domestic placement, for the first type of Member States, the court of the original Member State must first consult the Central Authority or the relevant authority with jurisdiction in the other Member State. Only if the competent authority in the receiving Member State agrees can the placement order be made,⁶¹ if such consent is requested for placing the child in domestic cases. Member States are required to establish clear rules and procedures for the purposes of the consent referred to in Article 56, in order to ensure legal certainty and expeditiousness. The procedures must enable the court which is considering the placement to easily identify the competent authority and enable that competent authority to promptly grant or refuse its consent.⁶² The consent must be given before the placement takes place.⁶³ The procedures for consultation or consent are governed by the national law of the requested state (Article 56 (3)). In practice, as stated in the report by Carpaneto on this topic, this implies that the State of origin sends the Central Authority of the receiving State a written request under Article 56, providing information on the situation of the child and on the appropriate care solution envisaged. Next, the Central Authority of the receiving Member State will send the request to the competent judicial authorities which will commence a sort of investigation on the solution to be adopted. The Central Authority will prepare a report for the judicial authority which decides whether consent should be given by means of a decision.⁶⁴

⁵⁸ Carpaneto, 'Cross-border placement of children in the European Union', *op. cit.*, p. 26.

⁵⁹ CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255, paras 56-66.

⁶⁰ Carpaneto, 'Cross-border placement of children in the European Union', *op. cit.*, p. 26.

⁶¹ Rauscher, *Europäisches Kollisions- und Zivilprozessrecht*, *op. cit.*, p. 363.

⁶² CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255.

⁶³ Lamont, R., 'Care proceedings with a European dimension under Brussels IIa: jurisdiction, mutual trust and the best interest of the child' (2016 28 1) *Child and Family Law Quarterly*, p. 81; CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255, paras 81-82.

⁶⁴ Carpaneto, 'Cross-border placement of children in the European Union', *op. cit.*, p. 28.

The competent authority should be identifiable under the public law of the Member State and consent must be given before the placement takes place.⁶⁵ The procedures for consultation or consent are governed by the national law of the requested state (Art. 56 (3)).

In Member States in which public authority intervention is not needed for the placement of a child with a foster family a simple procedure can be followed. Where placement in institutional care or with a foster family does not require public authority intervention in the State of placement for domestic cases of child placement, a court of another Member State which decides on such a placement must inform the Central Authority or another competent authority in the State of placement.⁶⁶ The Member State where the child will be placed is not entitled to ask for any intervention by a public authority and no consent is required. The State of origin is under a duty to inform the receiving State of the placement of the child.⁶⁷

Concerning costs regarding cross-border placements, Brussels IIbis contains no specific provisions. The general provision of Article 57 is to be applied, which states that assistance will be free of costs and that each Central Authority bears its own costs.

5.1 Difficulties in application – relevant literature

One of the problems that remains to some extent unresolved in the EU concerns the placement of children in institutional care or with a foster family in another Member State. There is a growing number of cases in which children are being placed in alternative care across frontiers.⁶⁸ Apart from the problems relating to the scope and definitions of relevant terms of Brussels IIbis (see *supra* in this Chapter, under 5 ‘*Placement of a child in another Member State – Article 56*’), a number of other difficulties have been reported in the literature.

An important concern is the cooperation between Member States and Central Authorities. It has been suggested that the respective tasks of Member States and authorities involved should be clarified.⁶⁹ Better co-operation between the Central Authorities and local authorities in different Member States is needed. In this respect, it follows from Brussels IIbis that consultation between the Central Authorities is required, but in practice this consultation is not always effective.⁷⁰ It is unclear which information should be provided by the requesting State to the State of placement. Unclear is also which kind of investigation the requested State may put into place. Issues about the financial aspects of cross-border placement rise as well.⁷¹ Specific disruptions in the cooperation process involve a great variety of child welfare

⁶⁵ Lamont, ‘Care proceedings with a European dimension under Brussels IIa: jurisdiction, mutual trust and the best interest of the child’, *op. cit.*, p. 81; CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255, paras 81-82.

⁶⁶ Stone, *op. cit.*, p. 427; Setright, *et. al.*, *op. cit.*, p. 419.

⁶⁷ Judicial cooperation in civil matters in the European Union, a guide for legal practitioners, http://ec.europa.eu/justice/civil/files/civil_justice_guide_en.pdf, p. 51.

⁶⁸ Carpaneto, ‘Cross-border placement of children in the European Union’, *op. cit.*, p. 44; Miranda, *op. cit.*, p. 36.

⁶⁹ Carpaneto, ‘Cross-border placement of children in the European Union’, *op. cit.*, p. 11-12; Miranda, *op. cit.*, p. 36.

⁷⁰ Miranda, *op. cit.*, p. 36.

⁷¹ Carpaneto, ‘Cross-border placement of children in the European Union’, *op. cit.*, p. 54.

authorities in different countries in conjunction with Central Authorities not being well or appropriately coordinated.⁷²

As a result of the effectivity problems in the cooperation process between the different countries and authorities, the procedures can be lengthy. This procedure is thus considered to be inadequate with regard to the urgency that is involved in most cases of the placement of children in other Member States. Some 60% of the respondents in the Impact Assessment have stated that the current provisions do not function in a satisfactory manner and, moreover, several stakeholders and experts have called for a revision in this regard as a key priority.⁷³ As a result of the practical difficulties regarding cooperation, children are in practice already being placed with a foster family or in institutional care before permission has been received.⁷⁴ An obligatory time-limit for the approval of all transnational placings of children with foster families or in institutional care could be helpful.

The *exequatur* procedure is required by Brussels IIbis for a placement judgment to be enforced. Although it is not only largely disregarded in practice, it is also perceived as not particularly useful in the Member States where consent of the (Central) authority is necessary.⁷⁵

It has also been pointed out that there is a need for more clarity on the relationship between Articles 15 and 56; the definition should include specific obligations for Central Authorities regarding the timing of responses to requests, communication between Central Authorities and local authorities, and support for the physical transfer of children.⁷⁶

When placement abroad is intended, children's rights entail another important problematical point to be addressed. A revised or a new provision should address this issue because the whole procedure to be instituted must respect the rights of children living in residential institutions or in foster care. For that reason, there should be a specific reference in a revised Article 56 Brussels IIbis not only to guarantee the child's best interests when making decisions on the placement or provision of care abroad, but also to provide respect for children's rights when residing in residential institutions or with a foster family.⁷⁷

The European Parliament's Women's Committee amended Article 56 to encourage the Central Authorities to establish guidelines for cases generally, including those which involve domestic violence. Experience with Brussels IIbis demonstrates that the strategy has had a limited impact on the child abduction provisions where there is evidence of a gender dimension to the law, but it also highlights some of the difficulties in achieving gender-sensitive legislation and the wider aim of equality. There is no clear evidence that any gender perspective was incorporated in the proposals for Brussels IIbis and the final legislation contains no specific

⁷² Miranda, *op. cit.*, p. 36.

⁷³ Impact Assessment, p. 53.

⁷⁴ Frohn, L., 'Herschikking Brussel IIbis', (2016) 349 NIPR, p. 441-444; Carpaneto, 'Cross-border placement of children in the European Union', *op. cit.*, p. 54.

⁷⁵ Carpaneto, 'Cross-border placement of children in the European Union', *op. cit.*, p. 55.

⁷⁶ Lamont, 'Care proceedings with a European dimension under Brussels IIa: jurisdiction, mutual trust and the best interest of the child', *op. cit.*, p. 81.

⁷⁷ Miranda, *op. cit.*, p. 40.

child abduction provisions that address gender. Even if explicitly gender-focused legislation were to be adopted, it still remains subject to interpretation by the courts.⁷⁸

Finally, a remark in the context of a child's physical placement in another Member State which may be coupled with a transfer of the public law proceedings that have been taking place concerning that child to the Member State in which the child is to be placed. The timing of these two transfers will need to be carefully looked at.⁷⁹ If the public law proceedings are transferred in their entirety to another Member State which has accepted jurisdiction, before the child physically moves to his or her Article 56 placement, the courts of the sending Member State will not have any jurisdiction to deal with the practicalities of the child's move.

5.2 Difficulties in application – CJEU case law

The case law of the CJEU has been significant for the clarity of Article 56. In Case C,⁸⁰ the judgment stated that the scope of Article 56 includes the placement of a child with a foster family or in institutional care even when public law is involved. The expression 'civil matters' in Article 1 of the Brussels IIbis Regulation had to be treated as extending to those measures which, from a domestic perspective, 'fall under public law'.⁸¹ Furthermore, in the *Health Service Executive* case,⁸² the CJEU has ruled that Article 56 also includes situations where the placement of children in a secure institution providing therapeutic and educational care situated in another member state entails that, for the child's own protection, he or she will be deprived of his or her liberty for a specified period.

In the leading case C-92/12 PPU *Health Service Executive*, the CJEU interpreted how the requirement of consent in Article 56(2) regarding the placement of a child in another Member State can be fulfilled and what a competent authority is.⁸³

In 2002 the child S.C., of Irish nationality, was placed in the voluntary care of the Health Service Executive (HSE). Since the child was particularly vulnerable and had exceptional protection needs, it was in the child's best interests to be placed as a matter of urgency in a secure care institution in England. The Irish Health Service Executive requested the High Court to order the child's placement, and on 29 September 2011 the Health Service Executive informed the Irish Central Authority of the proceedings before the High Court pursuant to Article 56 and insisted that consent be obtained from the Central Authority for England and Wales.

On 25 October 2011, the Central Authority for England and Wales sent its consent to the Irish Central Authority, on notepaper bearing the heading of the secure institution and the

⁷⁸ Lamont, R., 'Mainstreaming Gender into European Family Law? The Case of International Child Abduction and Brussels II Revised' (2011) 17 3 European Law Journal, p. 378.

⁷⁹ Setright, *et. al.*, *op. cit.*, p. 213.

⁸⁰ CJEU Case C-435/06 C. [2007] ECR I-10141.

⁸¹ CJEU Case C-435/06 C. [2007] ECR I-10141, para 47. See also Dutta and Schulz, *op. cit.*, p. 6.

⁸² CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255.

⁸³ *Ibid.*, the first question in this case, regarding the material scope of the Regulation, has been addressed *supra* in Chapter 1, under 2.3 'Difficulties in application – CJEU case law'.

local authority of the town where that institution was located. This was confirmed by a letter from that secure care institution on 10 November 2011.

On 2 December 2011, the High Court, acting on its jurisdiction to exercise parental responsibility, made an order to place the child in such a specialised institution in England on a short-term interlocutory basis. This prompted the referring court to ask the CJEU to ascertain the extent of the obligations under Article 56 in relation to the nature of consultation and the mechanism for obtaining consent for the placement of a child, as well as what constitutes a ‘competent authority’.⁸⁴

Pursuant to Article 56(1), consultation of the Central Authority of the requested Member State or another authority having jurisdiction is mandatory where public authority intervention is required for domestic cases of child placements, such as in the underlying case. Where this intervention is not required, there is merely an obligation to inform the Central Authority pursuant to Article 56(4).⁸⁵

Provisions of Articles 56(1) and 56(2) must be interpreted as meaning that a ‘competent authority’ covers either a ‘central authority’ or any ‘other authority having jurisdiction’ and that a decentralised system in which there are a number of competent authorities is permitted under Article 56.⁸⁶

Article 56(3) expressly provides that the procedures for obtaining consent are to be governed by national law. It implies that Member States have a margin of discretion as regards the consent procedure. Member States are required to establish clear rules and procedures for the purposes of consent under Article 56.⁸⁷

Regarding the concept of a ‘competent authority’ it must be observed that, as a general rule, the term ‘authority’ refers to an authority governed by public law, which is also clear from the wording of Article 56.⁸⁸ Consent emanating from an institution which admits children in return for payment cannot constitute the consent of a competent authority because it is not in a position to make an independent determination, which constitutes an essential measure for the protection of the child.⁸⁹

Another question referred to the CJEU was whether *a posteriori* correction is possible in cases where it is shown that steps have been taken to obtain consent, but where the court ordering the placement is uncertain whether the consent required by Article 56 has been validly granted by the competent authority of the requested Member State.⁹⁰ The Commission would see no objection to an interpretation of the Regulation as meaning that the court dealing with the enforcement proceedings should stay those proceedings and that consent could be obtained at that time. In cases where authority is completely lacking, on the other hand, the procedure

⁸⁴ *Ibid.*, paras 67 and 69.

⁸⁵ *Ibid.*, para 70.

⁸⁶ *Ibid.*, para 73.

⁸⁷ *Ibid.*, paras 77-78, 82.

⁸⁸ *Ibid.*, paras 84-86.

⁸⁹ *Ibid.*, para 88.

⁹⁰ *Ibid.*, para 90.

for obtaining consent should be recommenced and the court of the requesting Member State should make a fresh placement order after it has determined that consent has been validly obtained.⁹¹

Summing up, consent, as referred to in Article 56(2), must be given

- prior to the making of the judgment on the placement of a child,
- by a competent authority,
- governed by public law; and
- in cases where there is uncertainty as to the validity of the consent, this may be corrected *a posteriori*.

Additionally, the referring court asked the following question: whenever a court of a Member State which has ordered the placement of a child in institutional care in another Member State for a specified period under Article 56 of the Regulation and adopts a new decision aimed at extending the duration of the placement, is it necessary on each occasion to obtain the consent of the competent authority in the requested Member State referred to in Article 56(2) of the Regulation and a declaration of enforceability under Article 28 of the Regulation?⁹² The CJEU held that a court of a Member State can only give a judgment ordering the placement of a child in a care institution situated in another Member State if the competent authority in the requested State has first consented to that placement. It follows that, where the competent authority of the requested Member State has given its consent to a placement by the court having jurisdiction which is limited in time, that placement cannot be extended unless that authority has given further consent.⁹³ Thus, an application for a new consent must be made.

Another problem that has been solved by the *Health Service Executive* judgment is that once an order has been registered for enforcement or declared enforceable it cannot actually be enforced until the relevant time limits for appealing against its registration have expired. The CJEU held that the Regulation must be interpreted as meaning that a placement order is to become enforceable at the point in time when the court of the requested Member State declares, in accordance with Article 31, that that order is enforceable.

The *Health Service Executive* judgment clarifies that where consent to placement under Article 56(2) Brussels Ibis has been given for a specified period of time that consent does not apply to orders which are intended to extend the duration of the placement. In such circumstances, an application for a new consent must be made. A judgment on placement made in a Member State and declared to be enforceable in another Member State can only be enforced in that other Member State for the period of time stated in the judgment on the placement.⁹⁴

⁹¹ *Ibid.*, paras 91-93.

⁹² *Ibid.*, para 134.

⁹³ *Ibid.*, para 138.

⁹⁴ CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255.

GUIDELINES – Summary

Family Mediation

A working group created within the framework of the European Judicial Network has been mandated with proposing efficient means to improve the use of family mediation in cases of international parental child abduction, as was proposed by the Stockholm Programme.⁹⁵

Article 55

Despite their overall positive functioning, the provisions on cooperation have not been considered to be sufficiently specific. This is particularly so in connection with the obligation to collect and exchange information on the situation of the child, Article 55(a).

Article 55 – absence of a time frame

The implementation of a time frame where the Central Authorities are involved in child abduction cases could be useful, as delays work in favour of the abductor and are potentially harmful to the child.

Article 55(c) with regard to provisional or protective measures

The CJEU has held in case A⁹⁶ that the protection of the best interests of the child may require that the national court which has taken provisional or protective measures should inform, directly or through the Central Authority designated under Article 53 of the Regulation, the court of another Member State having jurisdiction.

Article 56

Article 56 – deprivation of liberty for the child's own protection

The placement of a child in a secure institution providing therapeutic and educational care in another Member State, entailing the deprivation of liberty for the child's own protection, falls within the material scope of the Regulation by virtue of this express inclusion. However, the CJEU has stated in the *Health Service Executive* case that in accordance with

⁹⁵ Council document 16121/10, JUSTCIV 194, of 12 November 2010, Conclusions of the ministerial seminar organised by the Belgian Presidency concerning international family mediation in cases of international child abduction, available at <http://register.consilium.europa.eu>.

⁹⁶ CJEU Case C-523/07 A. [2009] ECR I-02805.

the exclusion of measures for criminal offences set out in Article 1(3)(g), such a deprivation of liberty must not be intended to punish the child.⁹⁷

Article 56 – requirements and safeguards

In Member States where, according to their domestic law, public authority intervention is prescribed in the context of domestic child placements, the court of the original Member State must first consult the Central Authority or the relevant authority with jurisdiction in the other Member State.

The requirements of Article 56 are:

- Member States must establish clear rules and procedures for the purposes of the consent referred to in Article 56, in order to ensure legal certainty and expeditiousness;
- The procedures must enable the court which is considering the placement to easily identify the competent authority and enable that competent authority to promptly grant or refuse its consent;
- The consent must be given before the placement is carried out.

The procedures for consultation or consent are governed by the national law of the requested state (Article 56 (3)).

In Member States in which public authority intervention is not required, a simple procedure can be followed. In this case, a court of another Member State which decides on such a placement must inform the Central Authority or another competent authority in the State of placement. No consent is required; however, there is a duty to inform the receiving State of the placement of the child.

Article 56 – scope

In Case C,⁹⁸ the CJEU held that the scope of Article 56 includes the placement of a child with a foster family or in institutional care even when public law is involved. The term ‘Civil Matters’ in Article 1 of Brussels Ibis had to be treated as extending to those measures which, from a domestic perspective, ‘fall under public law’.⁹⁹

Article 56(2) – requirement of consent

In the case of *Health Service Executive*,¹⁰⁰ the CJEU clarified that the consent referred to in Article 56(2) must be given:

⁹⁷ CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255, paras 56-66.

⁹⁸ CJEU Case C-435/06 C. [2007] ECR I-10141.

⁹⁹ *Ibid.*, para 47.

¹⁰⁰ CJEU Case C-92/12 PPU *Health Service Executive* [2012] ECLI:EU:C:2012:255.

- prior to the making of the judgment on the placement of a child,
- by a competent authority,
- governed by public law; and
- in cases where there is uncertainty as to the validity of the consent, this may be corrected *a posteriori*.

Additionally, the Court held that, where the competent authority of the requested Member State has given its consent to a placement by the court having jurisdiction and that placement is for a limited time, the placement cannot be extended unless that authority has given further consent. Thus, an application for a new consent must be made. Also, according to the CJEU, the Regulation must be interpreted as meaning that a placement order is to become enforceable at the point in time when the court of the requested Member State declares, in accordance with Article 31, that that order is enforceable.