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# Children's rights and parental responsibility from the perspective of private international law

- Thesis of PhD dissertation -

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## Contents

## 1. The subject matter, actuality, objective and structure of the dissertation

The intersections of two areas of law and their interactions always promise exciting challenges. In an ideal-case scenario, the rights and interests of children and parents harmoniously co-exist, complementing and reinforcing one another. At the same time, however, undoubtedly there are some tensions between children's rights and parental rights and obligations as well; it is especially interesting task to balance them and find possible options to manage them with the tools offered by law. The difficulties and beauties of this task are well reflected in the sphere of private international law, where potential conflict-of-laws need to be prevented and/or resolved, while preserving fundamental rights as intact as possible.

*The Convention on the Rights of the Child adopted on 20 November 1989 in New York*[1] (hereinafter: Children's Rights Convention) provides the foundation for children's international protection. As a follow up, several documents have been adopted globally, at EU and national levels, which regulate several other specific issues relating to children, which also indicates the commitment to this topic, as well as its complexity and the ensuing problems that need to be resolved.

Recently, European lawyers have shown an increasing interest in children's rights and their enforcement. One of the main driving forces behind that is the fact that the European Union (hereinafter: EU) has adopted and integrated into the Union law the *Charter of Fundamental Rights of the European Union*[2] (hereinafter: Charter of Fundamental Rights). The legal basis for that was granted by the Treaty of Lisbon[3], which made the protection of children's rights one of the objectives of the European Union, imposing an obligation to take those into account when adopting any EU legal act affecting children. Thus, children's rights were integrated into EU law by the Treaty of Lisbon, which at the same time paved the way for further legislative initiatives, opening new horizons and perspectives for the development of children's rights within the Union. The intensive legal harmonisation at EU level generated by the increasing number of cross-border family law cases in the area of civil law cooperation provides a suitable ground for an organic integration of children's rights and also for the further development of relevant jurisprudence, taking into account the fact that these norms have a considerable impact on children.

The issue of parental responsibility is also largely covered in the field of private international law. Laws and regulations extend over nearly every aspect of parental responsibility and several international norms deal specifically with parental responsibility. International conventions create a consensus-based, uniform regulatory environment preventing complications related to the differences of national rules, opening the way for a faster and more predictable cooperation between states. The secret and power of legal harmonisation in private international law lie in its ability to build a bridge between individual states and legal systems without affecting the internal substantive laws, which might have an especially important role to play in family law, largely influenced by national traditions and moral values frequently rooted in religion. At the same time, the uniform legal standards created by harmonised private international law rules have an indirect impact on EU and national laws and regulations, contribute to their coherent,

[1] Act LXIV. of 1991 on the promulgation of the Convention on the Rights of the Child, signed at New York on 20 November 1989

[2] Charter of Fundamental Rights of the European Union, Official Journal, C 326, 26. 10. 2012., 391–407.

[3] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Official Journal, C 306, 17. 12. 2007., 1–271.

further development, in spite of the reluctance concerning the harmonisation of substantive law. Nevertheless, with regard to substantive law on parental responsibility we may safely say that European systems of family law are characterised by an increasing degree of convergence.[4]

This thematics is topical in many respects. On the one hand, the *new Act XXVIII of 2017 on Private International Law* (hereinafter: PIL Code) recently entered into force, in the codification process of which I actively participated, and the new provisions concerning parental responsibility - among other areas – were adopted with my expert proposal taken into account. Secondly, recently the *Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility*[5] (the so-called *Brussels IIa Regulation*) was revised, in this working process I was also directly involved as an expert. As a result of the recast, the *Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction*[6] (hereinafter: *new Brussels IIa Regulation*) was adopted. Legislative reforms put the status, role and impact of children's rights in a new light providing an opportunity for a further adjustment and fine-tuning. The thirtieth anniversary of the adoption of the Children's Rights Convention, the seventieth anniversary of the adoption of the *European Convention on Human Rights and Fundamental Freedoms*[7] (hereinafter: ECHR), furthermore, the tenth anniversary of the *Charter of Fundamental Rights* taking effect also provide an opportunity for reflection concerning children's rights. Since I have been actively engaged with private international matters, I have an in-depth knowledge of this area. I often give lectures on this topic both in Hungarian and foreign languages at various fora for legal professionals. Furthermore, when talking about reasons for selecting this subject, mention must be made of the subjective reason that I am specialised in international family law, and in my daily work I have frequently encountered critical issues which have raised my interest for children's rights, the way they are reflected and enforced in international family law. In the dissertation I make an attempt to explore these two segments of law, which are the closest to my heart, taking into account that my work is necessarily limited in terms of quantity, compared to the volume and complexity of the task.

The objective of the dissertation is to identify the linkages between private international law aspects of children's rights and parental responsibility, and focusing on the modus operandi of these, give a critical analysis of the extent to which children's rights are enforced, highlight related dilemmas, difficulties and search for responses and various options as potential solutions. With all this taken into account, *the introduction part (I.)* presents the subject matter, identifies the research task and its objective, providing information on the research methodology applied. In the *historical part on the evolution of children's rights (II.)* the dissertation lists and explains the most relevant international and EU legal instruments regulating this area in a chronological order – so as to show and help understand the evolution of children's rights and related events of outstanding importance - paving the way for a detailed explanation of specific, individual aspects. Following this, the dissertation, in order to outline

[4] SZEIBERT Orsolya: Az Európai Családjogi Bizottság Elvei a házasság felbontása, a volt házastárs tartása, a szülői felelősség és a házastársak közötti vagyoni viszonyok terén, Budapest, Magyar Jog, 2017/1. 3.
[5] Official Journal, L 338, 23. 12. 2003., 243-261.
[6] Official Journal, L 178/1, 02. 07. 2019., 1-115.
[7] Act no. XXXI. of 1993 on the promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 and its eight additional protocols

the conceptual bases, gives an account of *children's rights, which might be considered as the most relevant from the aspect of parental responsibility (III.)*, analyses the way they are reflected in norms and outlines their domain of interpretation. The next part will explore *the notion of parental responsibility within the domain of private international law (IV.)*, highlighting the specificities of regulation, which at the same time provides a framework of interpretation. Then it goes on to examine in-depth the sophisticated relationship between the relevant legal instruments one by one and also in a comparative manner, taking into account elements linked to one another. By screening the current international, EU and domestic legal environment, it analyses the correlations of children's rights in the area of private international law and demonstrates the interactions between the two spheres. It scrutinises the theoretical impact of children's rights on the provisions of private international law and its actual manifestations and potential implications in practice, as well as the evolution of the interpretation of children's rights and the approach to them in the context of private international law. In the light of the crystallised case law of the Court of Justice of the European Union (hereinafter: CJEU) and the European Court of Human Rights (hereinafter: ECtHR) the dissertation discusses the inclusion of children's rights in international norms, their relevance, to what extent specific laws and regulations are convenient to serve children's rights, interests and needs, to what extent they are promoted by these and how they can contribute to legal interpretation. Mention will be made of what obligations children's rights impose on the European Union and its Member States, to what extent this area has been harmonised, to what extent it builds and relies on the relevant national laws and regulations. Feedback from related case-law is a specific and concrete tool of measuring the enforcement of children's rights. Nevertheless, it goes without saying that the description and analysis of all the relevant cases would go beyond the limits of this dissertation; therefore, I will only select some cases of key importance and some as model examples to serve as illustration. Cases of child abduction is the most relevant case law to be discussed here. Finally, the *closing chapter (V.)* shall summarise the main conclusions to be drawn from the analyses. Given that the dissertation focuses on parental responsibility, we will not discuss broader aspects, such as and in particular family status and adoption.

Through linking the private international law aspects of children's rights and parental responsibility and a scientific exploration focusing on the perspective of private international law, we will have a comprehensive picture of the situation of children's rights in this area. The dissertation provides guidance in this complex system of norms, relying on legal literature and case-law and their evaluation in order to provide an orientation that might be helpful in the course of law enforcement. Due to the variety of information and the broad perspective it takes, it might as well be useful for theoreticians. In concrete terms, a major benefit of the dissertation is that it provides ideas to help understand and evaluate the results of the new Brussels IIa Regulation, as well the new PIL Code, with particular regard to problems and uncertainties in the application of law related to individual problems. Additionally, we hope that the dissertation shall - in the first place - contribute to and encourage a more conscious attitude to children's rights and a more consistent application of law, all the more so as detailed and specific analysis of the area has not been made as yet in Hungary.

## 2. The methodology and sources of research

As for research methodology, these vary according to the specificities of the content of individual chapters. Taking that into account, the *descriptive* and the *analytical method* are

blended in the dissertation, sometimes combined with the *comparative legal technique*, which is complemented with a detailed analysis of *case law* and the *research of literature.* I applied a *critical approach* when processing information derived from case law and legal literature, after their *systematization* I drew conclusions through *abstraction* and/or *deduction.* The regulatory technique of relevant legal provisions, their concepts and interpretation reflected by court decisions have been analysed *with a comparative method.*

The chapter on the evolution of children's rights provides an overview from the perspective of the *history of law and legal dogmatics,* accordingly, this part is predominantly subjected to a *descriptive-analytical method*. The historical background provides assistance in putting into context, as well as drawing conclusions related to various processes. In order for the research to have a clear focus, it is necessary to select children's rights that are the most relevant from the perspective of parental responsibility; in this regard a method of *conceptual analysis* was given priority.

The *description of the specificities and internal logics of private international law* and using it as a *foundation* are indispensable for the research task to be carried out. The relations between children's rights and private international law provisions are reflected in a *legal dogmatics and case-oriented approach,* leading to settling of research findings through a *descriptive-critical analysis.* Related international, EU and national norms *will be compared* in general, as well as in particular aspects, highlighting common features and differences, touching upon problems of delimitation as well. This is all the more important because international norms serving as the basis for the protection of children's rights and international laws on parental responsibility were adopted at different points in time, and the harmonised application of relevant provisions poses theoretical, as well as practical challenges in more than one case.

The dissertation is based on a *wide-ranging research of EU and Strasbourg case law* and building on the various argumentation techniques included in these - sometimes *comparing* them to positions reflected in legal literature - it searches for logical links, explanations and potential contradictions. It is to be mentioned that the voluminous, immense Strasbourg case law caused difficulties in the course of research, and so did the fact that the online search engine of the Strasbourg case law does not provide an opportunity for more differentiated search criteria to be used, which would make it possible to focus on specific areas of law. Nevertheless, I made efforts to select the most *representative cases.*

International child abduction cases constitute a very special category, where due to the links to fundamental rights and the sensitive nature of cases, the confrontation between private international law and norms of fundamental rights can clearly be detected. I subjected this issue to a scrutiny by *making a parallel examination* and sometimes *contrasting* of international and EU laws and regulations, the decisions of the ECHR and the ECJ, which I will make specific through a *case study derived from my own, first-hand experience.*

In addition to case law, I rely on *Hungarian and a large number of foreign*, primarily English and French *legal literature (books, monographs, studies, so-called soft law instruments, commentaries, manuals, institutional documents*), which I made efforts to use substantially, when studying the regulation of parental responsibility and children's rights gaining ground through these norms. My own experiences as a *practitioner* (I dealt with many international family law issues for several years) enrich and make this work more credible, *my own empirical*

*research* and *theoretical experience* (participation in national and EU legislative work) supplement the information obtained as a result of data gathering.

## 3. Summary of the findings

1. *Generally speaking,* we can conclude that the international and EU-level normative foundations of *children's rights* are provided; these set high-level requirements. The criteria and the ensuing attitude laid down by the Children's Rights Convention gradually penetrates the regulation and application of law regarding children. The child is already an individual legal entity, not only the object of protection, in the course of the decision-making process the best interests of the child become that of decisive importance and so does the child's opinion to clarify his/her best interests, these - depending on the child's age and degree of maturity - become factors in the decision-making process. As a result of the Children's Rights Convention, the spirit of the private international law provisions relating to parental responsibility has gone through a transformation with children's rights having come to the fore. International, EU and national regulations together create the framework for a more accentuated enforcement of children's rights and a more children-focused justice. In relation to this, especially important is for the existing complex, heterogeneous laws and regulations to complete and reinforce one another.

As for the future, the increasing recognition and protection of children's rights can be predicted in an international context and in the EU alike. This process, which can already be seen as a trend, brings about interesting challenges and certainly accompanying doubts, giving rise to several open questions with special regard to the specific regulation of details, legal interpretation and the application of law in everyday practice. It is not possible to hide, however, a certain degree of inconsistency that exists in respect of the enforcement of these rights. In spite of existing legal grounds, the lack of the efficient enforceability of children's rights in practice is quite often,[8] and this is also clearly supported by the cases analysed.[9]

2. In the area of children's rights, the *United Nations* as the author of the Children's Rights Convention and the *Council of Europe* as the author and "carer" of the ECHR play key roles. The *European Union* as a third player also makes efforts to get more active in practice, it has been making progress with careful steps, but at an increasing pace.[10] The scope of competence of the EU extended by the Treaty of Lisbon in this area and children's rights enshrined in the Charter of Fundamental Rights provide further support for the fundamental rights construction, though they do not extend it as to its substance. As the Treaty of Lisbon did not vest a general legislative power on the Union in the field of children's rights, it can only take measures within its own powers. The Charter of Fundamental Rights undoubtedly opens a new era in respect of children's rights in the EU, however it did not result in any novelty or an essential change in the approach compared to the ECHR and the Children's Rights Convention; its significance lies in the fact that it created an EU dimension of children's rights and the possibility to require that

[8] Catherine GAUTHIER: Les mineurs dans le droit du Conseil de l'Europe, In: Catherine GAUTHIER, Marie GAUTIER, Adeline GOTTENOIRE (éd.): Mineurs et droit européens, 2012, Paris, Éd. Pédone, Collection Droits Européens, 34.

[9] C-195/08 PPU. Rinau case, ECLI:EU:C:2008:406; C-211/10. PPU. Doris Povse v. Mauro Alpago case, ECLI:EU:C:2010:400.; C-491/10 PPU. Joseba Andoni Aguirre Zarraga v. Simone Pelz case, ECLI:EU:C:2010:828; C-211/403/09. PPU. Jasna Detiček v. Maurizio Sgueglia case, ECLI:EU:C:2009:810.

[10] LUX Ágnes: A gyermeki jogok nemzetközi keretrendszere az ombudsman szemszögéből, Budapest, Családi Jog, 2011/4. 34.

those rights should be enforced in compliance with EU law. At the same time, the Charter of Fundamental Rights reinforces the rights rooted in the common constitutional traditions and international obligations of Member States and the reference to human rights and fundamental freedoms guaranteed by the ECHR are also of a symbolic nature.[11] The *ECtHR* and the *CJEU* carry out significant activities, which have a law shaping effect. In addition, the *Hague Conference on Private International Law* also actively contributes to the development of international family law regulations, more specifically to that of children's rights.

3. *The provisions of private international law on the issue of parental responsibility* - in particular *the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, concluded on of 19 October 1996 (hereinafter: Child Protection Convention), the *Brussels IIa Regulation, the Convention on the Civil Aspects of International Child Abduction*, concluded on 25 October 1980 (hereinafter: Child Abduction Convention), as well as the *Hungarian PIL Code* – form a *coherent system.* The genuine usefulness of international and EU provisions of private international law is unquestionable, since without them, based on varying national rules and sporadically existing other international agreements the settling of the issues related to children would be incomparably more difficult and more expensive in legal disputes involving several states. National regulations need to link up to the international system organically, combining the eventual further specific policy objectives. Given the complexity of the multi-level system of norms and the concurrent application of relevant laws and regulations, the practitioners need to focus on these *norms being complementary in nature* and also their *harmonious application.*

The intention *to protect children's rights* and to promote the best interests of the child *may be identified in several elements* of private international law provisions. With the regulations becoming more and more refined, the toolkit for the purpose of the protection of children's rights has also been extended: it includes, for example, the habitual residence based on the closest connection, as a connecting factor,[12] the strengthening of the right to participate,[13] and specific assistance to be provided through institutionalised cooperation between the states concerned[14]. The other major feature of the regulations is the endeavour *to aim at efficiency and facilitate practical application.* At the same time, respecting children's rights in individual cases and the expeditious, efficient implementation of the procedure are not always easy to reconcile.

Beside the provisions in private international law, which explicitly express the specific protection of fundamental rights (the requirement to hear the child, the best interests of the child), the *public policy* - linked to the best interests of the child and focusing on it - could continue to be a tool convenient to avert grave violations of law as a traditional instrument of the protection of rights, which – in such cases - can prevent that the legal consequences of a foreign decision occur domestically,[15] or could be used to avoid application of foreign law[16].

[11] Charter of Fundamental Rights preamble (5)
[12] Child Protection Convention Article 5., Brussels IIa Regulation Article 8., Hungarian PIL Code 118. § para (1)
[13] Child Protection Convention Article 23. para b); Brussels IIa Regulation Article 11. para (2) and (5)., Article 23. para b), Article 41. para b) and c), Article 42. para a)
[14] Child Protection Convention Articles 29-39., Brussels IIa Regulation Articles 53-58., Child Abduction Convention Articles 6-7.
[15] Child Protection Convention Article 23. para d), Brussels IIa Regulation Article 23. para a)
[16] Child Protection Convention Article 22., Hungarian PIL Code 12. §

Nevertheless, the role of public policy is diminishing, especially in the inter-community relationship of EU member states. Having regards to this, it is an important development that the new Brussels IIa Regulation preserved public policy as a ground for refusal,[17] thus in EU Member States, if there is an obvious threat to public policy, the foreign decision on parental responsibility is not recognised and enforced.

In respect of the individual aspects of private international law: assigning the *jurisdiction* to the forum of the habitual residence of the child as a main rule is justified by the intention to put the child's interests in the focus, because in addition to the fact that the forum closest to the child is able to process the facts and evidence better and faster, there is a higher chance of the child participating in the procedure and there is also a higher chance that the decision to be made takes the interests of the child more into account. The uniform jurisdictional rules ensure that the legal dispute is decided by the forum, which has really close connections with the matter, as well as the fair and efficient judicial procedure. The reasonable limits imposed on the choice of jurisdiction diminish the chance for *competing jurisdictions*, furthermore it also contributes to the prevention of *forum shopping* and contradicting decisions. As for the rules of designating *applicable law*, these aim to simplify and fasten the application of law, as a result of which the protection of the child in a broad sense of the word shall fall essentially under the law of the state of the habitual residence of the child, where his/her interests are concentrated and evidence can be taken more easily. As for the system of the *international movement of decisions*, we can claim that it basically aims to *promote legal continuity,* to which there are only very few specific exceptions.

In addition to this, private international law regulations also include a certain degree of *elasticity*, providing some room for the possibility to handle the specificities of the facts of the case; thereby considerations related to children's rights may be reflected in an *individualised* manner and the law enforcement may be adjusted to the interest of the child in a better way. For example, in exceptional cases the authority of another state might as well proceed instead of the forum of the state of habitual residence, if this serves the interest of the child (transferring the case to a more suitable forum),[18] as for applicable law, foreign law may as well be applied instead of *lex fori*,[19] assuming that the law of another state having close connections with the case may better promote the child's interests, furthermore, the enforcement of foreign decisions may be prevented if certain procedural deficiencies exist, including concerns about fundamental rights.[20]All these elements clearly reflect the influence of children's rights to private international law.

4. The *Child Protection Convention* launches forward-looking processes in respect of the rights of the child, which is taken on by the EU in Brussels IIa Regulation, inspired by the Convention. The objective of the *Brussels IIa Regulation* is to make the movement of decisions within the EU as smooth as possible, in order to facilitate the implementation of fundamental freedoms, with special regard to the free movement of persons. In this spirit, it unifies the grounds of jurisdiction and further simplifies the rules on the recognition and enforcement of decisions taken in other Member States, thus in respect of these only some fundamental guarantees may

[17] New Brussels IIa Regulation Article 39. para 1/a. and Article 41.
[18] Child Protection Convention Article 8-9., Brussels IIa Regulation Article 15.
[19] Child Protection Convention Article 15. para (2), Hungarian PIL Code 34. § para (2)
[20] Child Protection Convention Article 23. para (2), Brussels IIa Regulation Article 23. and Article 31. para (2), Hungarian PIL Code 109. § and 121. §

be requested (grounds for refusal).[21] Pursuant to the Regulation, the court applied to for the enforcement of a decision emanating from another Member State may exercise limited ex-post control over the underlying proceedings with the proviso that under no circumstances may a judgement be reviewed as to its substance.[22] Exceptions are the so-called privileged judgements (on the rights of access and return), [23]which enforcement is quasi automatic. The Brussels IIa Regulation allows for a large degree of autonomy concerning the forum of the state of the habitual residence of the child. In the background are *mutual trust, the principle of mutual recognition* based thereon, and the *closer cooperation* between Member States.

The Brussels IIa Regulation specifies several concrete cases when the best interests of the child are examined and taken into account in relation to procedural questions in the context of the regulation.[24] Nevertheles, the EU trend aiming at *simplification* gives rise to concerns from the perspective of the protection of fundamental rights.[25] The "performance-oriented" rules of the Brussels IIa Regulation integrating the *Child Abduction Convention* and rendering it more stringent in several aspects, promoting expeditious and efficient procedures especially imply a potential conflict with fundamental rights.

5. The *activities of the CJEU* are followed by interest and high expectations, as in order for the rights of the child laid down in the Charter of Fundamental Rights to be enforced in practice, they need to be explored further by the CJEU. The CJEU particularly promotes that attention should be given to the Children's Rights Convention and the Charter of Fundamental Rights in the course of the application and interpretation of EU law,[26] and it also stated that obligations derived from membership in the EU may not contradict the obligations of Member States based on national and international law.[27] The CJEU treats the ECHR as a source of the fundamental principles of EU law.[28] The Member States have acceded to the most relevant instruments of international law, which presupposes a stable national protection and guarantee, however, the EU itself is not party to the relevant international legal instruments on fundamental law, thus it is not party to either the Children's Rights Convention or the ECHR.

The CJEU has expressed on several occasions that in the course of applying Brussels IIa Regulation and interpreting national law in this respect, it focuses on the *efficient implementation and enforcement of EU law*.[29] However, priority given to EU law as *lex*

[21] Brussels IIa Regulation Article 23., Article 28. and Article 31. para (2)
[22] Ibid. Article 31. para (2)
[23] Ibid Article 40-42.
[24] Ibid preamble (12), Article 11. para (2) and (4), Article 12., Article 15., Article 23. para a) and b), Article 41. para 2/c., Article 42. para 2/a.
[25] Paul BEAUMONT and Emma JOHNSTON: Can Exequatur be Abolished in Brussels I whilst retaining Public Policy Defence, Geneva, Journal of Private International Law, 2010. 249-279; Gilles CUNIBERTI and Isabelle RUEADA: Abolishion of Exequatur. Adressing the Commission's Concerns, Heidelberg, RabelsZ, 2011. 286-316.; Peter SCHLOSSER: The Abolishion of Exequatur Proceedings – Including Public Policy Review?, Köln, IPRax, 2010. 101-104.
[26] Detiček case p. 53-59.; C-400/10 (2010) PPU. J. McB v. L. E. case, ECLI:EU:C:2010:582., p. 60.; Zarraga case p. 60.; C-540/03. European Parliament v. Council case, ECLI:EU:C:2006:429., p. 37.
[27] For example C-4/73. Nold, Kohlen und Baustoffgroßhandlung v. Commission of the European Communities case, ECLI:EU:C:1974:51, p. 13.
[28] For example C-274/99. Conolly v. Commsission case, ECLI:EU:C:2001:127, p. 37.; C-94/00. Roquette Frères case, ECLI:EU:C:2002:603, p. 25.; C-64/00. Booker Aquacultur case, ECLI:EU:C:2003:397, p. 65.; BLUTMAN László: Az Európai Unió joga a gyakorlatban, Budapest, HVG-ORAC, 2013. 519.
[29] Rinau case p. 82.; C-256/09. Bianka Purrucker and Guillermo Valles Pérez case, ECLI:EU:C:2010:437., p. 99.; Zarraga case p. 55.; Detiček case p. 34.

*specialis* and its efficient implementation based on mutual trust, sometimes seems to render the general clause in the Charter of Fundamental Rights on children's rights inferior and regrettably, children's rights might fall victim to this approach.

Based on case law, the conclusion may be drawn that though children's rights are given increasing importance in the case law of the CJEU, they are not a first priority. The CJEU mostly aims to protect EU laws slavishly,[30] in its judgements the protection of children's rights also guaranteed by the Charter of Fundamental Rights is relative and less decisive than the full support of mutual recognition. However, in recent judgements of the court more frequent references have been made to the best interests of the child, which may be a promising sign.[31]

6. In the area of the protection of children's rights the *ECtHR has the most substantial role.* The Children's Rights Convention has had a manifest influence to the ECtHR's jurisprudence. The court has a very rich case law covering a broad spectrum, especially in the context of the right to family life. Having regard to the fact that the Children's Rights Convention has not been provided with an own judge, the jurisprudence of the ECtHR has a particular importance, since beside promoting the uniform interpretation, it also performs judicial functions passing legally bound decisions. The approach of the ECtHR, which is focused on fundamental rights, is *ab ovo* a more favourable environment to foster an individual evaluation of the facts of the particular case.

Even knowing that a relatively small number of cases with a private international law dimension are brought to ECtHR, the attitude of ECtHR in this area seems to be somewhat reserved, which can as well be interpreted as a source of uncertainty;[32] this diminishes the chances of fundamental rights exerting influence. Most legal cases adjudicated by the ECtHR are related to the recognition and enforcement of judgements. From the case law of the ECtHR it follows that not even aspects of private international law, including the enforcement of a foreign decision, might constitute an exception to the obligations imposed on the parties to the ECHR,[33] which means that in theory it may be possible to establish responsibility for the enforcement of an unlawful decision. It is also visible from the case-law that the obligations derived from the ECHR might - on the one hand - lead to the acceptance of the legal consequences of foreign decisions,[34] on the other hand, it might as well lead to the refusal thereof.[35] As for cases with an EU dimension, the bottom line of the ECtHR jurisprudence - apart from some random digressions -[36] - is that in general it respects the relevant EU legislation.[37]

[30] James J. FAWCETT, Máire Ní SHÚILLEABHÁIN and Sangeeta SHAH: Human Rights and Private International Law, Oxford, Oxford University Press, 2016. 749.

[31] For example C- 455/15. P. v. Q. case, ECLI:EU:C:2015:763., p. 39., p. 53.; C-215/15. Gogova case, ECLI:EU:C:2015:725., p. 66.; C-565/16. Saponaro case, ECLI:EU:C:2018:265., p. 39-40.; C-111/17. O. L. v. P. Q. case, ECLI:EU:C:2017:436., p. 50., p. 66-68.

[32] FAWCETT, SHÚILLEABHÁIN, SHAH op. cit. 880.

[33] Louwrens R. KIESTRA: The Impact of the European Convention on Human Rights on Private International Law, New York, Springer, 2014. 298.

[34] Wagner and J. M. W. L. v. Luxemburg case, no. 76240/01., 28. 06. 2007.; Négrepontis-Giannisis v. Greece case, no. 76240/08, 03. 05. 2011.

[35] For example Pellegrini v. Italy case, no. 30882/96, 20. 10. 2001.; Eskinazi and Chelouche v. Turkey case, no. 146000/05, 06. 12. 2005.

[36] See Neulinger and Shuruk v. Switzerland case, no. 41615/07., 08. 01. 2009.

[37] Maria Caterina BARUFFI: A child-friendly area of freedom, security and justice: work in progress in international child abduction cases, Geneva, Journal of Private International Law, 2018, vol. 14/3., 407.

Undoubtedly, the ECtHR has significantly contributed to the solidification and further development of children's rights as a value to be protected. The ECtHR uses the Children's Rights Convention as a source of the interpretation of the ECHR,[38] and thereby it has made its provisions part of its own norms and jurisprudence. In the case law of the ECtHR, the Children's Rights Convention is a source frequently referred to, and the dynamic legal interpretation given by the ECtHR has also had a role in making the ECHR an efficient instrument to protect children's rights with.[39] Nevertheless, as for the consistent and coherent protection of children's rights by the ECtHR, some doubts may also be expressed.[40] In this respect, there are opinions according to which the protection of children's rights by the ECtHR has not translated into significant and comprehensive results.[41]

7. In respect of the subject matter, the *right to family life* is of outstanding importance from among the rights enshrined in the ECHR and the Charter of Fundamental Rights. Article 7 of the Charter of Fundamental Rights on the right to family life and Article 8 of the ECHR have the identical meaning and scope, therefore they can be interpreted in the same way.[42] A balanced approach to the two legal sources are also enhanced by the fact that the principles developed in the case law of the ECtHR serve as a reference in respect of the Charter of Fundamental Rights.[43]As regards the right to family life, it should be taken into account that this is not an absolute right, which means that lawful limitations might be justified.[44] In many cases the enforcement of various concurrent fundamental rights competing with one another gives rise to difficulties; in the case of the conflicting interests of those concerned - the parent, the child, the state - the decision-maker needs to make efforts to strike the proper balance.[45]

*Cases of international child abduction* are the models of the interaction between the private international norms on parental responsibility and children's fundamental rights. As the relatively frequent complaints relating to fundamental rights in cases of international child abduction provide a rich source for analyses and investigation, the ECtHR expressed its view primarily in relation to these cases; therefore, the impacts of fundamental rights are more visible in this area. In these cases we witness the "more lenient" interpretation of ECtHR. In this regard the difficulty consists in the fact that the Child Abduction Convention and the Brussels IIa Regulation intends to protect the interests of the child wrongfully removed (retained) abroad by his/her quick return, while the ECHR – taking into consideration the provisions of the Children's Rights Convention - would entail a more comprehensive approach of the child's interest, demanding a proper equilibration with the parent's interest.

[38] Wagner and J. M. W. L. v. Luxemburg case p. 120.
[39] Adeline GOUTTENOIRE: Les mineurs et la Convention Européenne des droit de l'homme, In: Catherine GAUTHIER, Marie GAUTIER, Adeline GOTTENOIRE (éd.): Mineurs et droit européens, Paris, Éd. Pédone, Collection Droits Européens, 2012. 9.
[40] Alapjogi Ügynökség: Kézikönyv a gyermekjogokra vonatkozó európai jogról, Luxembourg, Az Európai Unió Kiadóhivatala, 2016. 31.
[41] GAUTHIER (2012a) op. cit. 28.
[42] J. McB v. L. E. case p. 53.
[43] FAWCETT, SHÚILLEABHÁIN, SHAH op. cit. 747.
[44] ECHR Article 8. para (2)
[45] Iglesias Gil and A. U. I. v. Spain case, no. 56673/00., 29. 04. 2003., p. 48.; Ignaccolo-Zenide v. Romania case, no. 31679/96, 25. 01. 2000., p. 94.; Maumousseau and Washington v. France case, no. 39388/05., 06. 12. 2007., p. 62., p. 74.; Neulinger case p. 134.

The judgements of the ECtHR on child abduction clearly show that the ECtHR uses the Child Abduction Convention[46] and the Brussels IIa Regulation as a source of interpretation,[47] thus the positive (active) obligations derived from Article 8 on the right to family life enshrined in the ECHR are to be interpreted in this light. Here, the impact of private international law provisions on the interpretation of fundamental rights by the ECtHR can clearly be demonstrated. The ECtHR in the context of the right to family rights puts the focus on the positive obligations imposed on the state to reunite the child with the parent, which in the case of international child abduction requires measures to return the child. Accordingly, the ECtHR - indirectly - deduces the obligation of the expeditious and efficient enforcement of judgements ordering the return of the child from the ECHR itself. The ECtHR also explicitly says that as long as the judgement on the return is in effect, it is assumed on the basis of the judgement that the return will serve the interest of the child.[48] Along this line, if the judgement on the return shall not be amended later by another judgement, the return of the child could as well serve his/her interest even after several years has passed; this might lead to absurd situations, as in such cases the child should be returned to the parent living in another state even if they have not seen each other for years, what is more, the child might not even know the parent.[49] To the contrary, in some decisions of the ECtHR – for exemple in *K. J. v. Poland case* – we can find an argumentation according to which if a longer period of time elapsed since the removal of the child – in the present case three and half year – there is no basis to interpret the ECtHR's judgement establishing the infringement „as obliging the respondent state to take steps ordering the child's return",[50] despite the fact that the delay was related to the long procedure. The latter approach may be endorsed by the best interest of the child.

Therefore, the predominant message sent by the case law of ECtHR - apart from some exceptions, with special regards to the *Neulinger and Shuruk v. Switzerland case* - reflects the concept in the Child Abduction Convention. The expectation of the ECtHR expressed in the Neulinger case concerning the in-depth exploration of the family life would really be hard to reconcile with the summary proceedings prescribed by the Child Abduction Convention. It is for this reason that strangely enough, in respect of the Neulinger case, the "fear" of the excessive influence of fundamental rights[51] was raised. Nevertheless, the Neulinger and the other cases approached similarly by the ECtHR show that the prompt return of children is not uncontradictional in the light of the best interest principle. The *X. v. Latvia case*[52] shows that the ECtHR - as a sort of correction - took a judgement more in line with the spirit of the Child Abduction Convention and closer to the traditional approach, which - under the given circumstances - might also be suitable to enforce children's rights. In this manner it might reconcile the specificities of private international law with fundamental rights requirements. In the latter case, the ECtHR gives priority to evaluating the interests of the child, which according to the court's view can be done within the framework of the exceptions specified by the Child

[46] For example Ignaccolo-Zenide v. Romania case p. 95.; Sylvester v. Ausztria case, no. 40104/98., 24. 04. 2003., p. 24., p. 72.
[47] Shaw v. Hungary case, no. 6457/09, 26. 07. 2011., p. 68.
[48] Tonello v. Hungary case, no. 46524/14., 24. 04. 2018., p. 76.; see also M. A. v. Austria case, no. 4097/13., 15. 01. 2015., p. 136.; Severe v. Austria case, no. 53661/15, 21. 09. 2017., p. 110.
[49] For example Tonello v. Hungary case
[50] K. J. v. Poland ügy, no. 30813/14., 01. 03. 2016., 76. p.; the ECtHR arrives to similar result in the Neulinger case as well, see p. 145.
[51] FAWCETT, SHÚILLEABHÁIN, SHAH op. cit. 859.
[52] X. v. Latvia case, no. 27853/09., 26. 11. 2013.

Abduction Convention. Hopefully this approach will encourage the courts to make more considerable efforts to explore the interests of children in these cases. In parallel with this, however, the margin of appreciation of the court deciding on return is considerably reduced. The position crystallized by the ECtHR in the X. v. Latvia case was followed in other subsequent cases as well (for example: *Efthymiou case,*[53] *Penchevi case, Rouiller case, Gajtani case*[54]).

In several cases the ECtHR has established the violation of Article 8 of the ECHR on the right to family life on grounds that the state concerned did not take adequate and efficient measures to promote the return of the child who was wrongfully abducted.[55] The ECtHR stated that the positive obligations derived from the ECHR and imposed on the state require expeditious return proceedings in compliance with the Child Abduction Convention, and its prolongation without proper grounds shall result in the violation of Article 8.[56] The necessity of prompt action is frequently one of the criteria of the efficiency of proceedings, because the passage of time might have irreversible consequences in these cases in respect of the parent-child relationship.[57] According to the conclusions of several cases, the delay itself constitutes ground for establishing the failure of the state to comply with its positive obligations derived from the ECHR.[58] As for the enforcement of foreign judgements, the ECtHR required adequate and efficient enforcement measures taking into account the urgency of the case, [59] including, among other things, the sanctioning of the obliged person - who might prevent enforcement and in a given case might even hide the child - for the lack of cooperation.[60] In the case of the failure to enforce the judgement due to the hiding of the child, the state of enforcement may not be held accountable only if the given state made regular and genuine efforts to find the child.[61] Notwithstanding the above, the ECtHR was of the opinion that coercive measures should be limited in cases involving children, the rights and rightful interests of those concerned need to be respected, with special focus on the best interests of the child. Coercive measures taken against children need to be avoided if possible, but they cannot be ruled out in the case of the parents' clearly wrongful conduct.[62] Accordingly, the ECtHR did not find police intervention to enforce the return of the child impossible to reconcile with Article 8 on the right to respect

[53] Phostira Efthymiou and Ribeiro Fernandes v. Portugalia case, no. 66775/11, 05. 02. 2015.
[54] Gajtani v. Switzerland ügy, no. 43730/07, 09. 09. 2014.
[55] For example Ignaccolo-Zenide v. Romania case p. 101-113.; Cavani v. Hungary case, no. 5493/13, 28. 10. 2014., p. 55-62.; Iglesias Gil and A. U. I. v. Spain case p. 52-62.; Maire v. Portugal case, no. 48206/99, 26. 06. 2003., p. 69-78.; Bianchi v. Switzerland case, no. 7548/04., 22. 06. 2006., p. 92-99.; Monory v. Romania and Hungary case, no. 71099/01., 04. 05. 2005., p. 72-85.; Ferrari v. Romania case, no. 1714/10, 28. 04. 2015., p. 44-56.; Shaw v. Hungary case p. 70-77.; Raw and Others v. France case, no. 10131/11., 07. 03. 2013., p. 84-95.; M. A. v. Austria case p. 109., p. 126-131., p. 135-137.; V. P. v. Russia case, no. 61362/12., 23. 10. 2014., p. 154.
[56] G. S. v. Georgia case, no. 2361/13., 21. 07. 2015., p. 63.; G. N. v. Poland case, no. 2171/14., 19. 07. 2016., p. 68.; K. J. v. Poland case p. 72.; Carlson v. Switzerland case, no. 49492/06., 08. 11. 2008., p. 76.; Karrer v. Romania case, no. 16965/10., 21. 02. 2012., p. 54.; R. S. v. Poland case, no. 63777/09., 21. 07. 2015., p. 70.; Blaga v. Romania case, no. 54443/10., 07. 07. 2014., p. 83.; Monory v. Romania and Hungary case p. 82.
[57] For example R. S. v. Poland case p. 70.; K. J. v. Poland case p. 72.; Josuf Caras v. Romania case, no. 7198/04, 27. 07. 2006., p. 38.; Penchevi v. Bulgaria case, no. 77818/12., 02. 10. 2015., p. 58.
[58] Shaw v. Hungary case p. 72.; G. S. v. Georgia case p. 63.; G. N. v. Poland case p. 68.; Carlson v. Switzerland case p. 76.; Karrer v. Romania case p. 54.; R. S. v. Poland case p. 70.; Blaga v. Romania case p. 83.; Monory v. Romania and Hungary case p. 82.
[59] V. P. v. Russia case p. 154.
[60] Maire v. Portugal case p. 74-78.; Maumousseau and Washington v. France case p. 83.
[61] Ignaccolo-Zenide v. Romania case p. 109.; H. N. v. Poland case, no. 77710/01, 13. 09. 2005., p. 80-82.; Cavani v. Hungary case p. 60.
[62] For example Cavani v. Hungary case p. 59., Shaw v. Hungary case p. 67.

for family life.[63] The proper reasoning of the decisions are of cardinal importance as a precodition for the evaluation of an eventual violation of a right derived from the ECHR.[64]

Therefore, we can conclude that in relation to international child abduction, the ECtHR definitely aims to make *efforts to pass decisions with a deterring effect to wrongful removal of children.*[65] At the same time, in matters involving children, the best interests of the child have to (should) be given priority; to this end a case-by-case adjudication is indispensable. Nonetheless, based on the regulation adopted in this context and within its limited framework, there is definitely a bottleneck as for the enforcement of fundamental rights. The system, which focuses on the restoration of the *status quo ante,* requiring swift proceedings and checking on that, offers limited possibilities for the forum proceeding in the case of the return of the child.

As a general conclusion we may establish that the ECtHR is searching for the possibility to give legal interpretation which is in line with the Child Abduction Convention, and for this reason it scrutinizes the issues of fundamental rights through the sometimes unevenly cut lens of private international law norms. Similarly, in the context of the EU-law - based on the Brussels IIa Regulation - it accepts the fact that enforcing a decision taken in another Member State on the return of the child is an obligation which derives from EU law and it "turns a blind eye" to potential violations of law which might happen in the Member State of origin. The Brussels IIa Regulation in the framework of the so-called overriding mechanism generates a *quasi automatic obligation* for the enforcement of the decision taken in another Member State ordering the return of the child provided with a certificate, without having control over the underlying primary proceeding.[66] In light of the ECHR, this frequently results in contradictory situations. The ECtHR took the position according to which the mechanic enforcement of a decision taken as a result of the overriding mechanism on the return in compliance with the EU Regulation does not violate Article 8 of the ECHR, given that the limitation of the right to respect for family life is based on a legitimate ground laid down in the Brussels IIa Regulation.[67] The Member State applied to for enforcement meets its obligation imposed upon it by EU law when enforcing the foreign judgement, and in this case, it does not have any margin of appreciation; the assumed breach of the fundamental right may be remedied in the Member State of origin. In the background of this strategy followed by the ECtHR is the so-called *Bosphorus doctrine*[68], according to which the EU law is assumed to provide fundamental right protection, which is equivalent to that in the ECHR.[69] For this reason, the forum of the Member State complying with EU law, which is considered ab ovo as being in conformity with fundamental rights by the standards of the ECHR, proceeds lawfully when enforcing a judgement taken in another Member State, although the later might even raise concerns from the fundamental right's perspective, i.e. the Member State of enforcement may not be held accountable for a potential breach occurred in relation to compliance with its obligations derived from EU law.

Consequently, in cases related to child abduction, the return of the child may not be ordered automatically,[70] at the same time the interests of the child concerned may be given priority only

[63] Maumousseau and Washington v. France case p. 85.
[64] Ferrari v. Romania case p. 48.; G.S. v. Georgia case p. 47.
[65] Povse case p. 43., p. 63.; Rinau case p. 52.; Detiček case p. 49.
[66] Brussels IIa Regulation Article 47. para (2)
[67] For example Povse v. Austria case, no. 3890/11., 18. 06. 2013., p. 73.
[68] Bosphorus Hava Yollari Turizm VE Ticaret Anonim Sirketi v. Ireland case, no. 45036/98, 30. 06. 2005.
[69] Povse v. Austria case p. 103.
[70] Neulinger and Shuruk v. Switzerland case p. 138.; Maumousseau and Washington v. France case p. 72.

in the context of the exceptional grounds for denial of return listed taxatively in the Child Abduction Convention.[71] However, in order to do this, these exceptions need to be carefully and substantially examined and evaluated. This is how the concurrent application of the ECHR and the Child Abduction Convention may be realised. It needs to be mentioned that in the ECtHR's view, the separation of the child from the abducting parent (in most cases the mother) shall not be considered in itself a grave risk of psychological harm.[72] The risks relating to the return of the child might be mitigated to some extent through, for example, provisional measures (for example, in the case of domestic violence); in this respect the recast of the Brussels IIa Regulation is a step forward.

8. The *impact of the EU law pillar of fundamental rights* is also the most visible *in cases of child abduction*, though the results are limited. The *CJEU* has proved as a good and reliable ally of the EU legislator, since in several of its decisions it promoted and contributed to the return of the child and thereby deterred wrongful conduct.[73] The CJEU places emphasis on the special character of the cases of child abduction and the efficiency of rules based on mutual trust in order to achieve the objective of the swift return of the child.[74] As a proof of trust, the return judgement of another Member State needs to be enforced automatically, based on the essential presumption that the proceedings in the Member State of origin were in compliance with the provisions of the Brussels IIa Regulation. The so-called overriding mechanism established by the Brussels IIa regulation entails that the forum of the Member State where the child had his original place of residence can modify the decision on non-return passed by the forum of the Member State where the child has been abducted (retained)[75]. The CJEU takes the position that the protection of fundamental rights pursuant to the Brussels IIa Regulation is a responsibility that falls on the forum of the Member State applying the review mechanism. It is the obligation and the responsibility of the forum in the Member State of the child's original habitual residence to ensure the practical enforcement of children's rights granted in the Charter of Fundamental Rights. All legal remedies including complaints on breach of fundamental rights need to be sought in the Member State of origin. The CJEU is consistent as - in conformity with the EU law - the enforcement of a judgement accompanied with a certificate taken in another Member State may not be refused, even if the suspicion of a breach of fundamental rights arises.[76] As a result, the forum of the Member State of enforcement does not have any tools to prevent the eventual breach of fundamental rights. Therefore, the interests of the child being inferior to the efficient enforcement of EU law gives rise to concerns as it restrains or prevents the child directly concerned from being given an individual treatment.

On the whole, in the case-law of the CJEU a certain kind of reluctance can be perceived as regards the lack of the in-depth analysis of the consequences of the children's rights enshrined in the Charter of Fundamental Rights. In the case-law of the CJEU, the primacy of the best interests of the child as a legal policy aspect declared by the Brussels IIa Regulation and the protection of fundamental rights granted by the Charter of Fundamental Rights take a less

[71] Child Abduction Convention Article 12. and Article 13.; X. v. Latvia case p. 101.
[72] K. J. v. Poland case p. 67.; G. S. v. Georgia case p. 56.
[73] For example Rinau case, Povse case, Detiček case
[74] Rinau case p. 17., p. 50., p. 52., p. 63.; Purrucker case p. 72-73.; Detiček case p. 45., p. 47.; Povse case p. 10., p. 46., p. 70., p. 77-82.; Zarraga case p. 21.; C- 92/12. PPU Health Service Executive and S. C., A. C. case, ECLI:EU:C:2012:255., p. 102-103.
[75] Brussels IIa Regulation Article 42.
[76] Rinau case p. 89., p. 109.; Zarraga case p. 75.; Povse case p. 82., p. 85-86.

concrete form. We cannot say that the CJEU carries out a careful fundamental rights test based on the Charter of Fundamental Rights in cases of international child abduction. The forum of the Member State of enforcement has to trust that equivalent and effective protection of rights enshrined in the Charter of Fundamental Rights was granted in the proceedings.[77] However, in the absence of a guarantee of the equivalent level of protection, which can be considered as a precondition for mutual trust, both children's rights and mutual trust might be undermined.[78] Therefore, with respect to the case-law of the CJEU we can conclude that the principle of mutual recognition receives full support and is given full respect, whereas the protection children's rights also granted by the Charter of Fundamental Rights plays a comparatively more modest role. Mutual trust seems to impose a limit on considerations related to fundamental rights. In light of this, the real outcome of the specific case impacting the child concerned is of a much less importance.[79]

9. *Taking a closer look at the activity of the CJEU and the ECtHR at the same time*, a kind of cooperation or the endeavour to implement a kind of cooperation might be seen, which is reflected in taking into account the judgements of the other forum and referencing them,[80] though in the case of the CJEU it seems to be more of a declarative nature. The aim of the dialogue is to two courts' approach to fundamental rights and prevent diverging interpretation.[81] However, despite the „legal diplomacy," the CJEU has been criticised for keeping distance to the Strasbourg jurisprudence,[82] while the EU-Member States are bound by the legal standards developped by the ECtHR.

Regarding the ECtHR, in cases with an EU dimension bases its activities on the assumption that the ECHR and EU law provide equivalent protection to fundamental rights and in most cases,[83] it does not carry out the fundamental rights test in actual terms, in spite of the fact that in a particular case the presumption of equivalence may as well be contested, if the protection granted proves to be "clearly insufficient."[84] Thus the ECtHR has tried to avoid the conflict between EU and international law by means of applying the presumption of the equivalent protection of rights. It treats EU private international law norms as "given" and incontestable, presuming the legitimacy of proceedings which comply with the letter of the EU norm, by not analysing in actual practice the functioning of fundamental rights. For reasons which may also be attributed to the lack of screening private international law norms from a fundamental rights perspective, the relations between these two contexts are less clear.[85] Therefore, the responsibility for integrating children's rights-related considerations into the decision-making

[77] Zarraga case p. 70.
[78] RAFFAI Katalin: Néhány gondolat a gyermek meghallgatási jogának érvényesüléséről az Európai Bíróság Zarraga-ügyben született döntése okán, In: FEKETE Balázs, HORVÁTH Balázs, KREISZ Brigitta (szerk.): A világ mi magyunk vagyunk…Liber Amicorum Imre Vörös, Budapest, HVG-ORAC, 2014. 430-431.
[79] See Zarraga case, Detiček case
[80] SZABÓ Sarolta: Alapvető jogok védelme és az Európai Unió nemzetközi magánjoga, Budapest, Iustum Aequum Salutare, 2014/2. 51.
[81] European Parliament: Fundamental Rights in the European Union: The role of the Charter after Lisbon Treaty, European Union, European Parliamentary Research Service, 2015. 13.
[82] Gráinne de BÚRCA: After the EU Charter of fundamental rights: the Court of Justice as a human rights adjudicator?, Maastricht, Maastricht Journal of European and Comparative Law, Vol. 20, 2013. 172.
[83] For example Hromadka and Hromadkova v. Russia case, no. 22909/10., 11. 12. 2014., p. 161. As an exception we can mention the Sneerson and Kampanella v. Italy case (no. 14737/09., 12. 07. 2012.), in which the ECtHR established the violation of Article 8. of the ECHR.
[84] See the opinion of judge Ress to the Bosphorus case, 3. p.; see also Povse v. Austria case p. 103.
[85]FAWCETT, SHÚILLEABHÁIN, SHAH op. cit. 881.

process finally lies with national courts proceeding in individual cases. This is the reason why it is extremely important for those applying the law to recognise the complex implications of fundamental rights on private international law norms.

On the whole, through the prism of the examined cases we can arrive to the conclusion that both the CJEU and the ECtHR pay growing attention to the rights of the children. However, for the time being the provisions of the Charter of Fundamental Rights on protecting children's rights - generally applicable in the context of EU law - are manifested in an inadequate manner in the case law of the CJEU, and we cannot claim with full certainty that the ECtHR definitely and consistently protects children's rights either.[86]

10. *The best interests of the child* appear in several aspects. Undoubtedly, the evaluation and establishment of the best interests of the child in the widest sense is possible in proceedings on the substance concerning parental responsibility. This presupposes an in-depth analysis of the situation of the child, which provides a basis for exploring different alternatives and opting for one of them, depending on which serves the welfare of the child the best. In general terms, the private international law essentially promotes the interest of the child by dissolving the inevitable collisions arising in cross-border matters, as well as by bridging the extra difficulties related to international character of the matter.

In cases with private international law aspects, the jurisdiction, applicable law as well as the recognition and enforcement of the foreign judgment need to be decided upon; in this context the decision is not directly related to the substance of the matter, therefore, the role and weight of the best interests of the child might be relativised. In the context of the recognition and enforcement of a foreign judgment for example, no comprehensive analysis is made of the best interests of the child; this may arise mainly through the invocation of public policy, if the legal implications of the foreign judgment would lead to results which are obviously and clearly against the best interests of the child.[87] However, this is possible only extremely rarely, in cases when serious reasons come into play.

As it is seen from the legal cases examined, the *CJEU* typically does not explicitly deal with the context of the best interests of the child and its content in substance. The role of the best interests of the child is mostly present in relation to the question of jurisdiction emphasising the importance of decision-making by a forum, which is the closest to the child,[88]furthermore, it is referred to in the context of the hearing of the child,[89] and the recognition and enforcement of judgments.[90] At the same time, the CJEU in the *J. McB v. L.E. case*[91] names the individual criteria on the basis of which the best interests of the child can be defined, these include the quality of the relationship between the parents, the relationship between the child and the parents and the responsibility taken by the parents for the child. Otherwise, it happens frequently that the CJEU seems to lose sight of the best interests of the child and its protection

[86] GAUTHIER (2012a) op. cit. 28.
[87] See Brussels IIa Regulation Article 23. para a); Child Protection Convention Article 23. para d)
[88] For example Detiček case p. 38.; Purrucker case p. 84.; C. v. M. case p. 50.; Gogova case p. 66.; Saponaro case p. 39-40.
[89] Zarraga case p. 63-64., p. 66-68.
[90] Povse case p. 80-83.; P. v. Q. case p. 39., p. 53..
[91] J. McB v. L. E. case p. 62.

in a specific case.[92] In this regard, in individual cases, compliance with rules on a general and abstract protection frequently proves to be insufficient.

Though the concept of the best interests of the child is not explicitly included in the *ECHR*, it has frequently been taken into account by the ECtHR[93] and by integrating it into the interpretation of the ECHR it has promoted its global uptake. The best interests of the child are used by the ECtHR as an element of guarantee, a criterion used in interpretation and evaluation processes in the context of Article 8 of the ECHR on the right to respect for family life. The best interests of the child should be considered in the first place,[94] and the ECtHR acknowledges a broad consensus on this.[95] The ECtHR lets both the Child Abduction Convention and the Brussels IIa Regulation be seen as legal instruments which promote the best interests of the child and - if applied properly - contribute to the enforcement thereof. Defining the best interests of the child depends on individual circumstances, in this respect the ECtHR attaches primary importance to the maintenance of family relationships - except cases where the family is not suitable for this - and being brought up in a safe environment.[96] All in all, however, it seems that the ECtHR has not been consistently committed to ascertaining that the best interests of child are effectively protected.[97] The best interests of the child have become significant in the case-law of the ECtHR only approximately over the past decade.[98]

11. The far-reaching protection of children's rights is reflected in the most informative way in the efforts aiming at *the hearing of children with respect to decisions concerning them,* as well as in taking into account their opinions - depending on their age and degree of maturity – in decision making process. The hearing of the child as part of procedural rights is enshrined in private international law provisions on parental responsibility as an explicit requirement. Both the Child Protection Convention and the Brussels IIa Regulation require that the child should be heard as an indirect precondition for the recognition and enforcement of foreign judgments, enlisting it amongst the grounds for refusal.[99] The Children's Rights Convention and the Charter of Fundamental Rights *as lex generalis* provide only the framework for the hearing of the child.[100] According to the main rule, the child who is able to express his/her opinion should be heard in every case which concerns him/her. Given that the hearing of the child is also subordinated to the best interests of the child, the latter in a given case might justify to omission of child's the hearing; in light of this, the hearing of the child should be decided upon on a case-by-case basis. It is a welcome development that the hearing of the child becomes increasingly and generally accepted in the European countries, it becomes a natural event, and the debate surround more the way of the hearing and the guarantees provided thereof.

Nevertheless, several decisively important elements of the hearing of the child remain unclear. One such element, for example, is related to the question of the degree of maturity of the child; individual states regulate this differently and the regulations of the other criteria under which

[92] See Povse case, Zarraga case, Rinau case
[93] For example Jeunesse v. The Netherlands case, no. 12738/10, 03. 10. 2014., p. 118.
[94] Gnahoré v. France case, no. 40031/98, 17. 07. 2001., p. 59.; X. v. Latvia case p. 95.
[95] Neulinger case p. 135.; X. v. Latvia case p. 96.
[96] For example Gnahoré v. France case p. 59.
[97] FAWCETT, SHÚILLEABHÁIN, SHAH op. cit. 719.
[98] Anette FAYE JACOBSEN: Children's Rights in the European Court of Human Rights – An Emerging Power Structure, Leiden, International Journal of Children's Rights, 2016. 548- 549., 556.
[99] Brussels IIa Regulation Article 23. para a), Child Protection Convention Article 23. para d)
[100] Children's Rights Convention Article 12., Charter of Fundamental Rights Article 24. para (1)

the hearing can be made also vary. A further question is how, under what conditions and procedural guarantees may the hearing of the child be carried out; currently the private international norms does not have any provisions on that, thus leaves it completely to the law of the proceeding forum. A source of further discussions on interpretation is when the opportunity for the hearing can be considered as actually given. To what extent the decision-maker takes into account the opinion of the child and what weight the child's opinion carries - those are questions that go beyond the sphere of private international law.

The two elements of children's rights – the protection and participation - have to be properly balanced. The gradual move away from paternalistic attitudes provides an increasing space for children themselves to participate in making decisions impacting on their lives, at the same time, to this end – and in a wider sense to have access to justice - proper information and professional support for the children concerned are necessary, including legal and other help as well (having their own legal representative, guardian ad litem, other helpers). In addition, the decision-making procedure also needs to be adjusted according to the children's needs and the criteria of child-friendly justice.

In the argumentation of the *CJEU* the right of the child to being heard has played a relatively insignificant role, which is partly due to the fact that the hearing basically is regulated by national procedural law and in this respect the forum of the Member State has a large margin of appreciation.[101] Based on the grounds set forth in the Brussels IIa Regulation, the CJEU contributed to granting the child the right to hearing mostly by prescribing the "genuine and effective opportunity" as a requirement,[102] however, this has not been effectively tested. The CJEU also stated that the child's right to be heard is not absolute, this will be decided by the proceeding forum in the light of the child's best interest.[103]

As regards the *ECtHR*, it has underlined the importance of the opinion provided by the child in several judgments.[104] Nonetheless, in the cases adjudicated by the ECtHR, granting the child the right to being heard in actual terms was less stringently required.[105] In the case law of the ECtHR in the context of child abduction, the right of the child's hearing seems to carry less weight; in this matter the ECtHR took the position that the objection of the child to his/her return in itself does not necessarily constitute ground for the refusal of return, even if the child can be considered as sufficiently mature,[106] thus in this respect other factors also play a role. This position is debatable in case of a teenager child,[107] with special regard to the fact that the Child Abduction Convention shall cease to apply when the child attains the age of sixteen years.

[101] Ruth LAMONT: Children's Rights in the European Union: Evaluating the Role of the European Court of Justice, Bristol, Jordan Publishing, International Family Law, Policy and Practice, 2013/1. 70.
[102] Zarraga case p. 68.
[103] Ibid. p. 64.
[104] For example M. K. v. Greece case, no. 51312/16., 01. 02. 2018., p. 74., p. 85-87., p. 91-92.; Rouiller v. Switzerland case, no. 3592/08., 22. 07. 2014., p. 66.
[105]For example Sneersone and Kampanella v. Italy case p. 21., p. 42.; Levadna v. Ukraine case, no. 7354/10, 27. 04. 2010., p. 2.; Blaga v. Romania case p. 80.
[106] For example Raw and Others v. France case p. 94.; Blaga v. Romania case p. 78-80.
[107] In the Raw and Others v. France case the child concerned was fifteen-year-old.

Although in the decision of the ECtHR the support for children's participation in the procedures affecting them is clearly reflected, the full potential lying in this is far from realised.[108]

12. The *new Brussels IIa Regulation* may be considered as a progress made in several aspects and predictably it shall provide a reinforced protection of the interests of children. In proceedings related to parental responsibility it prescribes the hearing of the child as a general obligation.[109]It aims to solve the issue related to the different interpretation of the right of the child to being heard in the Member State – problem also indicated by the relevant *Zarraga case* - by means of mutual recognition, as Member States were not able to agree upon uniform minimum procedural standards. Accordingly, pursuant to the new regulation, Member States shall recognise the hearing carried out in compliance with the laws and regulations of the other Member State[110] (for example, on who and how will carry out the hearing of the child). At the same time, the new regulation also stipulates that the proceeding forum shall provide a "genuine and effective" opportunity for hearing, taking into account the best interests of the child and the circumstances of the case. Should the hearing of the child in person be impossible, the regulation promotes the application of other alternative means, such as video conferencing and other modern communication technologies.[111] In addition, the absence of the hearing of the child is listed among the grounds for the refusal of the recognition and enforcement of the judgment,[112] therefore the recognition and enforcement of a foreign decision may be denied on that ground, but this is only an opportunity. However, this opportunity makes it possible for the forum requested to enforce the judgment to exercise a kind of control over the underlying proceedings and based on the facts of the case, it may conclude whether the exceptions named in the Regulation are met, and whether the failure to carry out the hearing in the underlying proceedings was lawful or not.

*By the abolishment of the exequatur* (declaration of enforceability)[113] proceedings are expected to be conducted faster and in a more simple way, which can be conceived of as supporting the settlement of the case as swiftly as possible in the interest of the child, but this applies mostly to non-contested cases. At the same time, guarantees remain, but these might be referred to in the phase of enforcement. In parallel with the reinforcement of the principle of mutual trust between the Member States, the new Brussels IIa Regulation aims to make the movement of judgments even more free, limiting the grounds for refusal to the necessary minimum.[114]The lack of fundamental procedural guarantees may continue to be an obstacle in the way of the recognition and enforcement of judgments in another Member State,[115] except for the so-called privileged decisions, which are due to be given a special treatment.[116]

In the cases of *placing the child in another Member State* the new Brussels IIa Regulation - except for the placing of the child with parents and exceptionally with relatives - prescribes the consent of the receiving Member State as mandatory, and the authorities of the receiving state

[108] Ursula KILKELLY: The CRC and the ECHR: The contribution of the European Court of Human Rights to the implementation of Article 12 of the CRC, LIEFAARD, Ton, DOEK, Jaap (szerk.): Litigating the Rights of the Child, London, Springer, 2014. 207.
[109] New Brussels IIa Regulation Article 21. and preamble (39)
[110] Ibid preamble (57)
[111] Ibid preamble (40) and (53)
[112] Ibid Article 39. para (2) and preamble (57)
[113] Ibid Article 34.
[114] Ibid Article 39. and Article 41.
[115] Ibid Article 39. and Article 41.
[116] Ibid Article 42., Article 45. and Article 50.

- except for urgent cases - need to take the decision on this within three months.[117]As a result of a Hungarian initiative, a way of making the obligation to take into account the child's identity more concrete in the Children's Rights Convention,[118] the new Brulles IIa Regulation includes a rule on exchange of information,[119] pursuant to which in respect of a child left without parental custody in one Member State, in relation to the placement of the child information may be obtained on the child's relatives (for example, grandmother) living in another Member State or on other persons close to the child who might be suitable to care for the child. This would provide an opportunity for the child to get back to his/her own home country, avoiding his/her adoption by complete strangers in the Member State where he/she actually resides, which previously had happened in several cases of relevance for Hungary.

The new regulation harmonises *the rules on the stay and refusal of the enforcement of the judgments*, thus as a uniform condition, enforcement proceedings may be suspended, if enforcement would expose the child to a grave risk of physical of psychological harm due to temporary impediments, which have arisen after the decision was given (for example, the serious illness of the child),[120] and enforcement may be rejected, if the above serious risk persists. [121]As a result, such situations are given similar treatment in Member States.

In relation to *authentic instruments and agreements* pursuant to the more stringent provisions of the new regulation[122] only those authentic instruments and agreements in matters of parental responsibility shall be recognised and enforced in other Member State which have binding legal effect and are enforceable in the Member State of origin. A positive development from the perspective of the child is that as a guarantee, the law says that the certificate of enforceability may be issued, if there is no sign indicating that the parental agreement is contrary to the best interests of the child.

As for *proceedings related to international child abduction* the new regulation provides for several provisions[123] that strengthen the protection of the child (for example, the forum proceeding in the question of return may take provisional measures [124]to promote the protection of the child after the return, in addition it might prescribe provisions on maintaining contact with the parent left behind).[125]At the same time, one of the priorities of the new regulation remains the efficiency, rooted in mutual trust, which proved to be an achievement that cannot be withdrawn.

During the recast, the *overriding mechanism*[126] was maintained in cases of international child abduction, which is doubtful from the point of view of children and is expected to remain one of the biggest challenges. The forum of habitual residence has the role of the primary and "final" decision-maker, which solution favours the lawful situation and in theory and in general terms may be considered as fair. Typically, the forum closest to the child can be the most suitable one to take long-term decisions concerning the child; the substantive decision-making procedure on

[117] Ibid Article 82. para (1)-(2) and (6)
[118] Children's Rights Convention Article 8. para (1)
[119] New Brussels IIa Regulation Article 82. para (3) and preamble (84)
[120] Ibid. Article 56. para (4)
[121] Ibid Article 56. para (6)
[122] Ibid. Article 65. para (2) and Article 66. para (2)
[123] Ibid. Articles 22-29.
[124] Ibid. Article 27. para (2) and (5)
[125] Ibid. Article 22. para (2)
[126] Ibid. Article 29.; see also Rinau case, Zarraga case, Povse case

parental responsibility presupposes a substantive and detailed analysis, which in general provides proper grounds for the consistent protection of fundamental rights. However, with respect to children, who were wrongfully removed and retained in another Member State, the previous habitual residence is no longer the closest forum and in such cases the participation of the child in the proceedings in most cases is problematic. A further question arises: is a twofold decision a better decision? If, for example, the return of the child is refused on grounds that in the requesting state there is a risk of physical or psychological harm or the decision on the refusal was the result of the objection of the sufficiently mature child, then disregarding this decision subsequently and forcing a new decision - contrary to the former one - ordering the return to be handed down by the forum of the habitual residence is disputable. This way the proceedings for the return conducted in one Member State (target country) will have a sort of preliminary and provisional nature,[127] which is subordinated to the final decision to be taken by the forum of the habitual residence, and as such it might question the meaningfulness of return proceedings conducted in the target country. Probably, this also undermines trust between Member States by putting the Member State of habitual residence at an advantage and that - taking a sort of "revenge"- might ignore the decision of the Member State of abduction. Therefore, in this "frustrating" situation created by the overriding mechanism, the authorities of the latter Member State might try to obstruct the enforcement of the decision on return of the child, on various grounds. The consecutive proceedings may also be questioned in respect to economy of procedure, they fully exploit the mental and material resources of parents further damaging the relationship between them, which also has serious negative implications on their child. The amendment of the decision of one Member State by a decision taken in the other Member State - typically within a short period of time - may only be justified by a substantial change of circumstances and related to this, the best interests of the child. The review mechanism may lead to contradictions from a fundamental rights point of view, because the forum of the Member State of enforcement has no possibilities to guard against the breach of fundamental rights in the underlying proceedings, in the Member State of origin. The relevant judgments of the CJEU do not provide assurance for the case when the 'overwriting decision' is insufficient in terms of the protection of fundamental rights. Nevertheless, in this respect it is a step forward that the new regulation to some extent reforms this overriding mechanism prescribing specific provisions for such cases to serve as an orientation. Accordingly, in the review proceedings, all the circumstances of the case need to be examined and the decision may not be solely based on the conduct of the parents - even if that might be considered as wrongful - i.e. the decision cannot function as a sanction and in the text of the regulation the best interests of the child is also mentioned as an explicit criterion in the decision-making process.[128]

Also in relation to the wrongful removal or retention of the child abroad: the *provisional enforceability of the decision on the child's return* notwithstanding any appeal [129]introduced with the purpose of accelerating the enforcement is also doubtful. The return of the child based on the non-final first instance decision passed in the target state makes legal remedy unreasonable, and if afterwards according to the decision made as a result of the legal remedy procedure the already returned child could still stay in the target country, then the child will

[127] Anatol DUTTA and Andrea 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, Journal of Private International Law, Geneva, Inderscience Publishers, 2014, vol. 10 No 1, 22.
[128] New Brussels IIa Regulation preamble (48)
[129] Ibid. Article 27. para (6) and preamble (47)

need to be returned to that country again, which exposes the child to yet another burdensome event. With all this taken into account, it is necessary to mention that provisional enforcement of the return decision needs to be decided upon in light of the best interests of the child, and the proceeding forum might consider provisional enforcement, since this is only an option.

A further essential step forward is that the new regulation encourages the parties to resort to *amicable settlement*,[130] offering and making more visible the option of mediation in the context of the regulation. Under the new law in child abduction matters it will be possible for the court of the target country (where the child was taken to) to approve the agreement between the parties on every issue that falls under the scope of the regulation, which currently is not possible due to the obstacles linked to the fixed jurisdiction under the current Brussels IIa regulation.[131] This makes it possible to conclude so-called package deals (for example, according the parent's agreement, the child may stay in the target country, but shall maintain regular contact in the manner described in the agreement with the parent left in the other Member State, the child spends the holidays there, etc.). Settling various disputed issues which usually arise in such sensitive cases through making mutual - and simultaneous - trade-offs provides better chances and facilitates the reaching of a consensus.

In the new Brussels IIa Regulation it is made clear that in connection with the regulation applicable law needs to be decided based on the conflict-of-laws rules of the Child Protection Convention that have a universal scope. This promotes that proceedings in cases of parental responsibility should be dealt *in line with international regulations* and by this way uncertainties should also be resolved, since the new provision provides for the link - currently missing -[132] with the jurisdiction rules of the Child Protection Convention.[133]

All in all, the Brussels IIa Regulation is undoubtedly bringing further favourable changes. Due to the requirement of unanimity, the diverging positions of Member States prevented more radical reforms and a further, deeper harmonisation. For example, based on the proposal concerning the minimum procedural rules pertaining to the hearing of the child, the proper level of protection could have been granted in a uniform manner in every Member State,[134]however, this did not receive sufficient support.

13. As far as the *new domestic regulation of private international law* is concerned, we can conclude that making it more transparent and simple, as well as its more organic integration into the system of international norms will undoubtedly bring positive changes in the area of the interests of children and children's rights, respectively.

The *PIL Code* subjects parental custody and guardianship to uniform regulation, which facilitates the application of law and prevents problems of delimitation. *Rules on jurisdiction* covering the entirety of custody relations - complementing Brussels IIa Regulation and thus residual in nature - grant protection to children with Hungarian nationality living outside the territory of the European Union through access to justice in Hungary[135]by enabling the adjudication of the matter related to these children even in case when their residence is in a

[130] Ibid. Article 25. and preamble (22)
[131] Ibid. preamble (43)
[132] Child Protection Convention Article 15. para (1)
[133] New Brussels IIa Regulation preamble (92)
[134] Benetta UBERTAZZI: The Child's Rights to be Heard in Brussels System, European Papers, Vol. 2, 2017/1. 32.
[135] Hungarian PIL Code 106. §

third country. By this way, the Hungarian nationals living and working abroad have the possibility to start custody proceedings in Hungary.

It is necessary to highlight the *new provisions on applicable law*, which establish harmony with the relevant provisions of the Child Protection Convention having a universal scope. Accordingly, pursuant to the PIL Code in a few residual cases not covered by the extremely broad material and personal scope of the Child Protection Convention - and therefore falling under the scope of the PIL Code -, the proceeding forum has the discretion to decide upon legal issues relating to parental custody in compliance with its own national law (*lex fori*). In this respect, the applicable law can easily be identified, thus the new rule will specifically and practically facilitate expeditious decision-making. At the same time, conflict-of-laws rules ensure a certain degree of flexibility, which enables the decision makers to apply or take into account foreign law closely connected to the case.[136] Therefore, decision-making can be better adjusted to the specific circumstances of the child concerned in the given case. The amendment abolishes parallel – diverging – provisions, based on a concept different from that of the Child Protection Convention, which earlier resulted in misunderstanding in practice.

In the context of *the recognition and enforcement of judgments*, several innovative provisions could also be named, which protect the interests of the child. The PIL Code, in addition to accepting foreign jurisdiction under the same conditions – thus without discrimination - as those applying to Hungarian jurisdiction,[137] recognises the possibility to assert claims in other countries in some cases, when the concerned party has close connection with the state concerned (the habitual residence of the child, decision on parental responsibility in relation to matrimonial matters),[138] and also accepts the jurisdiction of the forum of the State of nationality if the child has multiple nationality,[139] allowing the recognition and enforcement of the decisions based on such jurisdiction. Furthermore, the possibility to apply the more favourable recognition rules set forth in the PIL Code instead of the other relevant international agreements - based on the principle of *favor recognitionis* -[140] is also a step forward. Similarly, the *abolishment of reciprocity requirement*, which earlier was required as a precondition for the recognition of foreign judgments,[141] again aims to facilitate the acceptance of the legal effects of foreign judgments, thus making it unnecessary to conduct new proceedings and prevent the children from having different family law statuses in different countries.

14. We may draw the conclusion that the *relevant legal instruments* within the framework of the law area - at international, EU and national levels alike -, apply various methods to provide grounds for the enforcement of children's rights with special regard to the best interests of the child. Through preliminary impact assessments prior to the adoption of legal rules, the potential consequences those might have on children can be assessed preliminarily. The point of departure is undoubtedly good legislation, incorporating children's rights into laws, enabling enforcement through these. However, whether or not this is effective that depends on appropriate application of law and raising legal awareness. In both contexts there is still room for further refining and fine-tuning. The provisions of private international law and the

[136] Ibid. 34. §
[137] Ibid. 109. § para 1/a. and (2)
[138] Ibid. 118. §
[139] Ibid. 109. § para (3)
[140] Ibid. 111. §
[141] Law-decree no. 13. of 1979 on private international law 72. § para 1/c.

application thereof together should be suitable for the purpose of protecting children's rights; they may not hide the protected subjects as such, their specific needs and genuine personal interests.

15. In addition to legal instruments, *the role of other factors* should not be ignored, either. Monitoring activity, promoting the application and enforcement of existing rules of private international law in conformity with norms of fundamental rights through targeted and concrete measures are also significant. Sharing good practices might be instrumental in promoting and adopting methods which can serve as models. Drawing up methodological guidebooks, manuals, might as well be beneficial as they may provide detailed guidance as for the exact proceedings, the steps to be taken and harmonising the activities of the authorities involved. From the perspective of exploiting the opportunities provided by laws and regulations, a lot depends on the quality and intensity of the cooperation between authorities of the concerned states, which might as well be crucial. In the European Union, the European Judicial Network participates directly in resolving the difficulties relating to specific cases through the Contact Points. To facilitate prevention, parents and families raising children need to be informed of the methods of settling cross-border cases lawfully and the legal consequences thereof. In this respect, information published, publicly available and updated information on the e-Justice portal might also provide orientation to the affected persons. Digitalisation has its obvious benefits in terms of informing older children, encouraging their participation in proceedings with special regard to cross-border cases (for example, distance hearing through mobile applications, video conferencing). In sensitive cases of family law, mediation might play a prominent role as it is an ideal forum for involvement of children and enforcement of their rights; reaching agreement in a more peaceful and less formal environment is more likely to lead to an outcome which serves the best interests of the child. Promising pilot projects have been launched in several Member States (for example, Germany, Austria), which aim to facilitate agreement between parents in legal disputes concerning children and thereby a better enforcement of children's interests; this requires the joint efforts and work of experts specialised in conflict resolution (such as mediators, psychologists, child protection practitioners, guardians, lawyers).[142]

Going beyond legal specificities we can claim that a modern approach to the enforcement of children's rights based on the direct and active participation of children may become an everyday reality if children's rights are not embodied only in legal norms, but their meaning and the importance become an integral part of collective consciousness, as well as legal culture and will be applied in practice in a meaningful way.[143] To this end, children need to be provided with special and tailor-made, personalised support given by impartial helpers who have the right expertise, explicitly represent children's interests and stand up for their rights. The legal and other assistance are crucial prerequisites for children accessing justice and the essential elements of fair and child-friendly justice.[144] Though children's rights might predominantly be

[142] FAZEKAS Ágota: A gyermeki jogok érvényesülésének új tendenciái a családjogban, Budapest, Családi Jog, 2016/2. 4.
[143] GYURKÓ Szilvia: Támogatjuk, tűrjük vagy tiltjuk? – gyermekjogok Magyarországon, Budapest, Családi Jog, 2013/4. 20.
[144] Ton LIEFAARD: Access to Justice for Children: Towards a Specific Research and Implementation Agenda, Leiden, International Journal of Children's Rights, 2019/27. 209.

compared to real utopias, parents and all institutions responsible for children need to strive to make progress and get closer and closer to this noble end.[145]

16. As for *an outlook to the future: the accession of the European Union to the ECHR* - apart from and in addition to its symbolic significance - it might provide a new stimulus in the area of children's rights and may open up new horizons making the European Union ever more active in this area. At the same time, it might open up a way out from current anomalies and might be instrumental in resolving the contradictions that exist in respect of fundamental rights. Though the accession to the ECHR is not put on the agenda (again), possible alternative solutions as for the re-negotiation of the accession agreement are subject to consideration. The Council Conclusions adopted on the margins of the tenth anniversary of the Charter of Fundamental Rights on the one hand remind us of the fact that the Union is based on common values such as the respect for human rights enshrined in Article 2 of the Treaty on the European Union, and at the same time, reaffirms its commitment to the EU's accession to the ECHR, the objective of which is - according to the document - to reinforce common values and further enhance the effectiveness of EU law and improve the coherence of fundamental rights protection in Europe.[146] However, due to the complexity of the issue, in this field there is still a bumpy road to travel.

## 4. List of publications related to dissertation

Bereczki Ildikó – Csöndes Mónika: Néhány megállapítás a Brüsszel IIa. rendelet, az 1996. évi hágai gyermekvédelmi és a Kódex viszonyát, hatályát és alkalmazási körét illetően. In: Berke Barna – Nemessányi Zoltán (szerk.): Az új nemzetközi magánjogi törvény alapjai, Budapest, HVG-ORAC, 2016. 163-178.

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[145] Iris ENGELHARDT: Kinderrechte und elterliche Verantwortung, In: Claudia MAIER-HÖFER (hgb): Kinderrechte und Kinderpolitik, London, Springer VS, 2017. 185.

[146] Council Conclusions on the Charter of Fundamental Rights after 10 Years: State of Play and Future Work, adopted on 7 October 2019, 12357/19 limite, 1. p., 5. p.; https://data.consilium.europa.eu/doc/document/ST-12357-2019-INIT/en/pdf

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Bereczki Ildikó: Gyámság. Csehi Zoltán – Raffai Katalin (szerk.): A nemzetközi magánjog magyarázata. Kézikönyv a gyakorlat számára, Budapest, Wolters Kluwer, – accepted for publication (expected publication: 2020)

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Bereczki Ildikó: Tartási kötelezettségek. Csehi Zoltán – Raffai Katalin (szerk.): A nemzetközi magánjog magyarázata. Kézikönyv a gyakorlat számára, Budapest, Wolters Kluwer – (expected publication: 2020)