

# Brussels *Ibis*: Jurisdiction in divorce matters

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# Introduction

- **Brussels II *bis***
- **Regulation 2201/2003, replacing 1347/2000**
- **A big step, but no leap**

# Introduction to jurisdiction rules

- **Broad; many alternatives**
- **No 'formal' choice**
- **Rationale**
  - **Time of distress**
  - **People and families moving**
  - **(Absence of unified rules on applicable law?)**

# Geographical scope of application

- EU Member States,
  - **but not Denmark**
  - Including United Kingdom and Ireland

# Material scope of application

- Divorce
  - Judicial and administrative
  - Dutch *flitsscheiding* ?
- Annulment of marriages
- NOT:
  - Marriages
  - Civil status
- (Parental responsibility)

# Personal scope of application

- **The headache of Articles 6 & 7**
  - **Article 6:**

A spouse habitually resident in or a national of an EU State (domicile for Ireland & UK) → **ONLY** arts 3-5
  - **Article 7:**

If no EU court jurisdiction according to arts 3-5 → domestic rules on jurisdiction
  - **C-68/07, *Sundekind Lopez v Lopez Lizazo***

Regulation applies also if defendant habitually resident outside EU and no EU national

# Personal scope of application (2)

- **Four step analysis:**
  - Does the forum have jurisdiction under Brussels *Ibis*?
  - If not, does a court in another EU Member State have jurisdiction under Brussels *Ibis*?
  - If not, defendant's nationality and hab res?
  - Residual rules: national law

# **Jurisdiction rules: Art 3**

- 1. Habitual residence of the spouses**
- 2. Last habitual residence if one of spouses still lives there**
- 3. Habitual residence of the defendant**
- 4. If joint application: habitual residence of either of spouses**
- 5. Habitual residence of plaintiff if he/she resided there for a year prior to application**



# **Jurisdiction rules: Art 3 (2)**

- 6. Habitual residence of plaintiff if he/she resided there for 6 months prior to application AND had nationality or domicile (Ireland and UK)**
- 7. Common nationality or domicile (Ireland and UK)**

# Jurisdiction rules: Arts 4 & 5

- **Article 4:**
  - If court has jurisdiction according to Art 3, also to hear counter-claim
- **Article 5:**
  - Converting of legal separation into divorce

# Provisional measures

- **Article 20:**
  - In urgent cases
  - Regulation *does not prevent* provisional (& protective) measures available under national law, even if courts of another EU Member State has jurisdiction on substance
  - Cease to apply when Member State court with jurisdiction takes measures
  - Case C-523/07, A

# *Lis pendens*

- **Straight-forward and simple:**
  - First come, first served
- **Also if actions not identical**
  - eg divorce and legal separation
  - **but not maintenance (→ Brussels I !)**
- **What if same day?**
  - French Cass. 11 June 2008

# Amendments that were not enacted

- **Brussels IIter or Rome III?**
  - Rules on applicable law
  - Jurisdiction rules amended:
    - Limited choice of court
    - Deletion of Article 6
    - Deletion of reference to residual national rules; but enactment of one residual rule
- **Not for the moment**

# Unregulated... and problematic

- **The nationality issue**
  - and dual nationality: C-168/08, *Hadadi*, pending
- **Definition of marriage**
- **Same-sex couples**
- **Registered partners**
- **Civil status**