

The 1996 Hague Convention on parental responsibility and protection of children: news from Portugal—Analysis of the ruling of the Coimbra Court of Appeal of 24 October 2023, Case No. 4/23.5YRCBR

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The judgment on which this work is based is available for consultation at <https://www.dgsi.pt/jtrc.nsf/c3fb530030ea1c61802568d9005cd5bb/7a6c5b08afde7b1e80258a60004ba77e?OpenDocument> accessed 12 June 2025.

ABSTRACT

In this article, we intend to begin by briefly presenting the Portuguese system for the protection of children, with particular emphasis on the exercise of parental responsibilities and on protective measures. We will then provide an overview of the 1996 Hague Convention on Parental Responsibility and Protection of Children, specifically with regard to competent courts, applicable law, and the recognition of foreign decisions. After this introductory section, we will present a judgment of the Coimbra Court of Appeal, which concerned the recognition of a decision handed down by a London court. After presenting the background to the case, we will analyse each of the grounds presented by the child’s mother (jurisdiction, violation of public policy, and incompatibility between decisions), determine the applicable law, and then analyse the decision taken by the court.

KEYWORDS: The 1996 Hague Convention on Parental Responsibility and Protection of Children, Jurisdiction, Applicable law, Violation of public policy, Incompatibility between decisions, Recognition of foreign decisions

I. INTRODUCTORY CONSIDERATIONS ON THE PORTUGUESE CHILD PROTECTION SYSTEM

In the Portuguese legal system, parental responsibilities are understood as the set of rights and duties attributed by law to parents, aimed at protecting the child and promoting the child's full development. Parents are under a duty to consider their children's views on important family matters and to respect the children's autonomy in organizing their lives, in accordance with their level of maturity (Article 1878 of the Portuguese Civil Code).¹ Article 1874 of the Civil Code provides that the principal duties binding parents and children are the duties of respect, assistance, and support, which are reciprocal. In addition, Article 1674 establishes, in cases where the parents are married, a duty of cooperation between them, which should likewise extend to unmarried parents. As regards the child's name, pursuant to Article 1875(2) of the Portuguese Civil Code, it is to be chosen by mutual agreement of the parents, failing which the decision shall be made by a judge. With regard to the highly significant issue of the child's residence, Article 85 of the same Code provides that the child's domicile is the place of the family residence and, where such a place does not exist, the domicile shall be that of the parent with whom the child resides. The lack of agreement between the parents concerning the child's residence constitutes a matter of particular importance, allowing recourse to the courts (Article 1901(2)). Where the parents cease to live together or have never lived together, the child's residence depends on an agreement between both parents (Article 1776), and, in the absence of such agreement, the court shall decide (Articles 1778-A, 1906, 1909, 1911, and 1912).²

The general Portuguese regime governing the exercise of parental responsibilities applies not only to parents, but also to guardians (Article 1935 of the Civil Code) and to civil sponsors (Article 7 of the Legal Regime of Civil Sponsorship³).

About the exercise of parental responsibilities, whenever there are two holders, the exercise is joint in matters of particular importance (as follows from Articles 1901(2), 1904-A(1), 1906(1), 1911, and 1912 of the Civil Code). Where a disagreement arises between the two holders in relation to a matter of particular importance, it may be resolved by the court, upon application by either holder (Article 1901(2)). Sole exercise of parental responsibilities occurs where there is only one holder (as provided for in Articles 1903(1), 1904, and 1910), and also in cases where the two holders live, or will live, separately and it is established that joint exercise is contrary to the child's best interests (Articles 1906(2), 1909, 1911(2), and 1912). On the other hand, in respect of acts of everyday life, where the holders live together, either of them may perform such acts and the consent of the other is presumed (Articles 1902(1) and 1911(1)); where the holders live, or will live, separately, the exercise lies with the holder with whom the child is residing (Articles 1906(3), 1909, 1911(2), and 1912(1)). Notwithstanding

¹ Guilherme de Oliveira, *Manual de Direito da Família* (Coimbra: Almedina, 2020) 500–501.

² Ibid, 497–500. The court decides based on the best interests of the child. This criterion requires an assessment that considers factors relating to the child and factors relating to the parents. As regards the former, relevant considerations include the child's physical, religious, intellectual, and material needs; the child's sex; the degree of physical and psychological development; the continuity of the child's emotional relationships; the child's adjustment to the original extra-familial environment (school, friends, community, and non-school activities); the effects of a possible change of residence resulting from a disruption of that environment; the child's social behaviour; and the child's preference (whether expressed verbally or inferred). As regards the parents, the analysis focuses on their capacity to meet the child's needs; the time available to care for the child; their physical and mental health; their sex (there being a tendency to award custody to the parent of the same sex as the child); the continuity of the child's emotional relationships; the affection each parent has for the child; their lifestyle and moral conduct; their religion; their financial situation; their professional occupation; the stability of the environment each can provide for the child; and the willingness each parent demonstrates to maintain and encourage the child's relationship with the other parent. Finally, account may also be taken of geographical, material, and family circumstances. In this account, we follow Helena Isabel Dias Boileiro and Paulo Guerra, *A Criança e a Família: uma questão de direito(s): visão prática dos principais institutos do Direito da Família e das Crianças e Jovens* (2nd edn, Coimbra Editora, 2014) 205–09.

³ Approved by Law No. 103/2009 of 11 September; de Oliveira (n 1) 502–03.

the above, there are cases in which Portuguese law authorizes the minor to take decisions independently: for example, at the age of 16 years, decisions concerning religious education (Article 1886 of the Civil Code); at the age of 16 years, decisions regarding the termination of pregnancy (Article 142(5), *a contrario*, of the Portuguese Criminal Code⁴); at the age of 16 years, decisions relating to mental health interventions (Article 9(3) of the Portuguese Mental Health Law⁵); and, in the case of clinical interventions, from the age of 16 years onwards, the child may give consent alone (Article 38(3) of the Criminal Code).⁶

Regarding the child's property, the general rule is that the parents are responsible for administering the child's assets, pursuant to Article 1878(1) of the Civil Code. There are, however, certain assets or categories of assets that are not administered by the parents, namely those referred to in Article 1888(1)(a)–(c) (eg assets bequeathed or donated to the child with the exclusion of parental administration), as well as assets whose administration is entrusted to the child him- or herself (Articles 127(1)(a) and 1888(1)(d) of the same Code). In addition, Article 1889 lists the acts that require authorization from the Public Prosecutor's Office (eg contracting a loan).⁷ Where one or both parents place the child's property at risk as a result of poor administration, and where the situation does not amount to a case of deprivation of parental responsibilities, the exercise of parental responsibilities in respect of the child's property may be restricted, as provided for in Article 1920, without this having any implications for parental responsibilities concerning the person of the child.⁸

Deprivation of the exercise of parental responsibilities occurs where 'either parent culpably infringes their duties towards the child, causing serious prejudice to the child, or where, due to inexperience, illness, absence or other reasons, they are not in a position to fulfil those duties' (Article 1915), as well as in the situations listed in Article 1913 (eg where a parent has been convicted of a criminal offence to which the law attaches the effect of deprivation).⁹ In this regard, Article 3 of the Portuguese Law on the Protection of Children and Young Persons at Risk¹⁰ provides that the circumstances justifying intervention for promotion and protection arise where: (i) the parents, the legal representative or the person having de facto custody place the child's safety, health, training, education, or development at risk; (ii) that risk results from the action or omission of third parties, to which the parents, the legal representative, or the person having de facto custody do not adequately object; or (iii) that risk results from the action or omission of the child or young person him- or herself, to which the parents, the legal representative or the person having de facto custody do not adequately object so as to remove it. Paragraph 2 of the same provision sets out, by way of example, several situations in which a child or young person is considered to be at risk (eg where the child is abandoned or subjected to ill-treatment).¹¹ Article 2 of the same Law provides that all children and young persons at risk are covered by protective intervention,¹² regardless of their nationality, if they reside in or are present in Portuguese territory. This means that protection is independent of the connection of the specific case with other States and their respective legal systems, provided that no international instrument is applicable, as

⁴ Approved by Decree-Law No. 48/95 of 15 March.

⁵ Approved by Law No. 35/2023 of 21 July; de Oliveira (n 1) 507–11.

⁶ Ibid, 519.

⁷ Ibid, 520.

⁸ Dias Bolieiro and Guerra (n 2) 301–02.

⁹ de Oliveira (n 1) 523.

¹⁰ Approved by Law No. 147/99 of 1 September.

¹¹ Dias Bolieiro and Guerra (n 2) 33–35.

¹² Pursuant to Article 5(a) of the aforementioned Law, a 'child' is any person under 18 years of age, and a 'young person' is any person under 21 years of age who requests the continuation of an intervention initiated before reaching the age of 18, as well as any person up to 25 years of age whenever, and only for as long as, educational or vocational training processes are in place.

is precisely the case with the Hague Convention that forms the basis of the present study.¹³ For its part, Article 35(1) of the Portuguese Act on the Protection of Children and Young Persons at Risk exhaustively lists the protective measures available: (i) support to parents; (ii) support to another family member; (iii) placement with a suitable person; (iv) support for autonomous living; (v) family foster care; (vi) residential care; and (vii) placement with a person selected for adoption, with a foster family, or with an institution with a view to adoption.¹⁴

II. GENERAL OVERVIEW OF THE CONVENTION

In Portugal, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children was approved by Decree No. 52/08 of 13 November and has been in force since 1 August 2011.¹⁵ The origins of this Convention lie in the challenges arising from cross-border family disputes: (i) proceedings are often pending in different forums, and each court asserts its jurisdiction on the basis of its own rules, even where such jurisdiction overlaps with that of another court; (ii) there are barriers to the recognition of foreign decisions, which encourages further litigation; (iii) one of the parties may disregard a court order and remove the child to a jurisdiction perceived as more favourable, which, in addition to being traumatic, may affect the child's life as well as his or her well-being.¹⁶ Thus, the objective of this Convention is to ensure the recognition and enforcement in the Contracting States of measures taken in another Contracting State for the protection of the person or property of the child.¹⁷

As regards its material scope, this Convention applies to children from the moment of their birth until they reach the age of 18 years, in accordance with Article 2. It is an instrument that covers most measures aimed at protecting the person or property of children (whether under Private or Public Law¹⁸), in accordance with Article 3, which lists the types of protective measures covered by the Convention, with the exclusions provided for in the following article, which highlight, for example, the establishment and contestation of filiation, adoption, and maintenance obligations; in accordance with Article 4, both matters of Private Law—those provided for in subparagraphs (a)–(f)—and matters of Public Law—those provided for in subparagraphs (g)–(j)—are excluded.¹⁹ This covers parental responsibility, which, according to Article 1(2), includes ‘parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child’.

¹³ Dias Bolieiro and Guerra (n 2) 36–38. With regard to international jurisdiction, see, *inter alia*, the judgment of the Porto Court of Appeal of 22 February 2007, delivered by Judge Emídio Costa, case no. 0720409, available at <<https://www.dgsi.pt/jtrp.nsf/c3fb530030ea1c61802568d9005cd5bb/13617a195511da3080257296005193ba?OpenDocument>> accessed on 9 November 2025. The case concerned two minors, resident in Portugal, of British nationality, children of a Portuguese mother and a British father, both resident in England and both with a history of substance abuse. The Portuguese Public Prosecutor's Office brought child protection proceedings, and the parents challenged the international jurisdiction of the Portuguese courts. Acknowledging the primacy of international law over Article 2 of the Portuguese Law on the Protection of Children and Young People at Risk, the Porto Court of Appeal held that it had jurisdiction pursuant to Article 8 of the Brussels IIa Regulation (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), which confers jurisdiction on the courts of the Member State of the child's habitual residence, insofar as that Regulation was the applicable European instrument in force at the time the proceedings were instituted.

¹⁴ For a detailed analysis, see Dias Bolieiro and Guerra (n 2) 70–89.

¹⁵ Luís de Lima Pinheiro, *Direito Internacional Privado—Direito de Conflitos, Parte Especial*, vol II (4th edn, Coimbra: Almedina, 2018) 83.

¹⁶ Singapore Academy of Law, *Report on the 1996 Hague Convention on the Protection of Children* (Law Reform Committee, August 2017) 4.

¹⁷ Nigel Lowe, ‘The 1996 Hague Convention on the Protection of Children—A Fresh Appraisal’ (2002) 14 *Child and Family Law Quarterly* 191, 193.

¹⁸ *Ibid*, 194.

¹⁹ Christian von Bar and Peter Mankowski, *Internationales Privatrecht*, vol 2 (München: C H Beck, 2019) 734–35.

The territorial scope of application is not defined in general terms, but must be examined for each provision. In this regard, it should be noted that, in Portugal, international jurisdiction and the recognition of decisions on parental responsibility issued in other Member States of the European Union (EU) fall under the (current) Brussels II ter Regulation.²⁰ Under the terms of Article 97(1) of this Regulation, this instrument applies if the child is habitually resident in the territory of a Member State; in the case of the recognition and enforcement of a decision given by a court of a Member State in the territory of another Member State, the Regulation applies even if the child is habitually resident in the territory of a Contracting State to the 1996 Hague Convention to which this Regulation does not apply. In fact, Article 52 of the Convention contains a disconnection clause.²¹ Like the Convention, the Brussels II ter Regulation has adopted rules of jurisdiction guided by the best interests of the child, especially by the criterion of proximity. This justifies that, in both international instruments, the basic principle is that of the jurisdiction of the authorities and the law of the child's habitual residence at the time the proceedings are instituted,²² the primary objective being to eliminate competition between States regarding the establishment of measures for the protection of children.²³

As regards the scope of the applicable law, the Convention expressly refers to measures for the protection of children (Article 3) and the parental responsibility relationships to which this instrument applies (Article 1(2)). Once the law applicable to these legal relationships has been determined, that law shall govern: (i) the conditions for the establishment, modification, and termination of measures for the protection of the child and parental responsibility; (ii) the effects of such measures and legal relationships with respect to the child and the persons or institutions responsible for him or her, as well as with respect to third parties. This includes the internal effects of the protective measures, that is, the relations between the minor and the persons or institutions responsible for his or her care (eg it includes the question of whether the minor may change his or her habitual residence without the consent of the persons or institutions protecting him or her). It also covers the external effects of these measures, such as, for example, the representation of the minor.²⁴

In fact, Article 5 of the Convention provides for the jurisdiction of the legal or administrative authorities of the Contracting State in which the child has his or her habitual residence to take the necessary measures for the protection of the child's person or property. The concept of habitual residence is not defined in this instrument, but it is understood that it should be defined on a case-by-case basis by the competent authorities, based on *factual elements*, and should be subject to autonomous interpretation in light of the objectives of the Convention.²⁵ It should correspond

²⁰ 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. This Regulation revoked the Brussels IIa Regulation.

²¹ Lima Pinheiro (n 15) 93. On the relationship between the Brussels II ter Regulation and the Convention, see, with further details, Ana Sofia Gomes, 'Brussels II Ter Regulation and the Relations with Hague Conventions of 1980 and 1996' (2023) 66 *Boletim Ciências Económicas* 1559.

²² *Ibid*, 84–86.

²³ Singapore Academy of Law (n 16) 7.

²⁴ Alfonso-Luis Calvo Caravaca and Javier Carrascosa González, 'Protección de menores' in *Tratado de Derecho Internacional Privado*, vol II (2nd edn, Valencia: Tirant lo Blanch, 2022) ch XV, 2166.

²⁵ Hague Conference on Private International Law, *Manuel pratique sur le fonctionnement de la Convention de La Haye du 19 octobre 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesures de protection des enfants* (La Haye: Permanent Bureau of the Hague Conference on Private International Law, 2014) 40, available at <<https://assets.hcch.net/docs/Seadb8e0-db64-4f0a-98de-a7254837a419.pdf>> accessed 20 May 2025. From a Comparative Law perspective, there are some lessons to be learned. In Austria, the Supreme Court has already ruled that a period of residence exceeding six months in a State should be characterised as the child's habitual residence, even if it occurred against the will of the person exercising parental responsibilities. In Canada, it has been stated that determining habitual residence is a purely factual matter, based on the reality of the child's life (and not that of the parents); the period of residence must be considered in terms of continuity and the child must have a real and effective connection with the place, but there is no minimum period. In Germany, emphasis is also placed on the circumstances of the child's life, and it has been said that a period of nine months was sufficient to establish a new habitual residence, as the child

to the place that reflects a certain integration of the child into their social and family environment.²⁶ The following article deals with jurisdiction in cases involving refugee or internationally displaced children, establishing the jurisdiction of the authorities of the Contracting State where these children are located following their displacement. It also applies to children whose habitual residence cannot be determined (eg children who move very frequently), which means that the child's habitual residence in a Contracting State is not a mandatory condition for the Convention to apply.²⁷ Article 7, provided that the conditions indicated are met, extends the jurisdiction of the State of the child's previous habitual residence in the event of the child's unlawful removal. As for the authorities of the State of the child's nationality, their jurisdiction to take protective measures is limited to the request or consent of the authorities of the habitual residence, in accordance with Articles 8 and 9. Article 8(2) provides for subordinate and optional jurisdiction in relation to the authorities of other States that are better placed to assess the case in the light of the best interests of the child. The authorities of these States are only competent if the authorities of the State of the child's habitual residence consider that they are better placed, in the specific case, to assess the best interests of the child (paragraph 1 of the same article) or if they obtain the consent of the authorities of the State of habitual residence (Article 9(1))²⁸;

was already integrated into the place. In England, the parents' intention to stay is at least relevant and, in some cases, even decisive, although this perspective has been offset by a more objective interpretation based on the case law of the Court of Justice of the European Union. In Australia and New Zealand, different circumstances are considered, such as the parents' past and present intentions, but there has also been a tendency to adopt a more objective view, which attaches less importance to the parents' intentions. In the USA, approaches vary widely, but fundamental importance has been attached to the parents' intentions, although importance is also attached to the child's adaptation to a particular State, based on factual elements. Thus, there is a comparative tendency to emphasize factual elements. In summary, we can list some factors to be taken into account by the courts when determining the child's habitual residence: (i) where the child has been living; (ii) how integrated the child is in that State, particularly in terms of integration into the education system, culture, language and people with whom the child lives in that place; (iii) the habitual residence of the parents; (iv) the possible desire of both parents for the child to reside there; (v) the age of the child. In this journey, we follow Singapore Academy of Law (n 16) 12–14. On the other hand, there is a certain consensus that the temporary absence of the child from his or her habitual residence for reasons related to holidays, school or the exercise of access rights does not, in principle, change his or her habitual residence, as pointed out by Paul Lagarde, *Informe explicativo del Convenio de 19 de octubre de 1996 relativo a la competencia, la ley aplicable, el reconocimiento, la ejecución y la cooperación en materia de responsabilidad parental y de medidas de protección de los niños* (HCCCH 1997) 23, available at <<https://www.hcch.net/es/publications-and-studies/details4/?pid=2943>> accessed 11 November 2025. Along the same lines, see Henry Setright QC, and others, *International Issues in Family Law: The 1996 Hague Convention on the Protection of Children and Brussels IIa* (Bristol: Family Law, Jordan Publishing, 2015) 36. The Court of Justice of the European Union, within the scope of the Union's Private International Law, has held that, in addition to physical presence in the territory of a Member State, other factors must be taken into account to demonstrate that the presence is not, in any way, temporary or intermittent and that it shows a certain degree of integration of the child into a social and family environment, which is, in fact, the centre of his or her life. Factors to be considered include the duration, regularity, conditions and reasons for the child's stay in the territory of the Member State concerned and the child's nationality, factors which vary according to the age of the child concerned. They also include the place and conditions of the child's schooling, as well as the child's family and social relations in the Member State. The parents' intention to settle with the child in a particular Member State may also be taken into account if that intention is expressed by concrete measures (eg purchase or rental of a residence in the Member State concerned). The nationality of the person who gave birth or their previous residence in the Member State of the court concerned is not relevant; the fact that the child was born in that Member State and has the nationality of that Member State is insufficient. The consent of those who have parental responsibilities should not be essential for the change of habitual residence. However, the lack of consent may be relevant in indicating that the child's habitual residence is not yet established and may change in the near future, just as, conversely, the existence of consent to a change may indicate that habitual residence is likely to last, confirming a new habitual residence, as can be read in Peter Nygh, 'The Hague Convention on the Protection of Children' (1998) 45 *Netherlands International Law Review* 1, 13. In this regard, see eg the following cases: Case C-523/07 *Korkein hallinto-oikeus* [2009] ECR I-2805, available at: <<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-523/07>> accessed 13 November 2025; Case C-497/10 *Mercredi v Chaffe* EU:C:2010:829, available at: <<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-497/10>> accessed 13 November 2025.

²⁶ Hague Conference on Private International Law (n 25) 178. As for the point in time for assessing habitual residence, the moment when the court is seized of the matter must be taken into account. Taking into account another date, such as the moment when the hearing takes place, may encourage tactical delaying in cases of international abduction, as taught by Katarina Trimmings, Tung Le Xuan and Konstantina Kalaitoglou, 'The 1996 Hague Convention on International Child Protection in the UK post-Brexit: Focus on Jurisdiction and Recognition and Enforcement' (2024) 38 *International Journal of Law, Policy and The Family* 4–5, available at <<https://academic.oup.com/lawfam/article/38/1/ebae018/7819240>> accessed 19 November 2025.

²⁷ Hague Conference on Private International Law (n 25) 25 e 42.

²⁸ Lima Pinheiro (n 15) 86–88.

eg the State of the child's previous habitual residence or the State where members of the child's family who are willing to take care of the child live²⁹).

Article 10 provides for the jurisdiction of the authorities of the Contracting State in exercising their jurisdiction to decide on an application for divorce or legal separation of the parents of a child or for annulment of the marriage. To this end, it is required that (i) one of the spouses has or exercises parental responsibility, (ii) the jurisdiction of those authorities to take such measures has been accepted by the parents, as well as by any person with parental responsibility for the child, and (iii) it is exercised in the best interests of the child. According to paragraph 2, this jurisdiction ends as soon as the decision authorizing or refusing the application for divorce, legal separation, or annulment of the marriage has become final or the proceedings have ended for any other reason. The following articles establish the jurisdiction of the authorities of the Contracting State in whose territory the child or his or her property is located to take provisional measures of protection. As follows from Article 12 (1), this jurisdiction presupposes territorial effectiveness limited to the State in question, provided that such measures are not incompatible with measures already taken by the competent authorities under Articles 5–10. These provisional measures shall cease as soon as the authorities of a Contracting State which have primary jurisdiction have taken the measures required by the situation, in accordance with Article 11(2).³⁰

Regarding the applicable law,³¹ the Convention remains applicable, as the Brussels II Regulation does not deal with the determination of the applicable law. Therefore, within the scope of the Convention, it is necessary to distinguish between (i) the law applicable to measures for the protection of the person or property of the minor and (ii) the law applicable to parental responsibility. Protective measures are taken in accordance with the *lex fori* (Article 15(1)), in a desirable coincidence between *forum* and *ius*; even if the forum is not that of habitual residence, the *lex fori* remains applicable, since the law of the forum is always easier to apply and is therefore better applied.³² Protective measures are listed, by way of example, in Article 3 (eg attribution of parental responsibilities or placement of the child in an institution). The conflict rule in Article 15(1) is based on the idea that the jurisdiction of the authorities of the forum derives from connecting factors that express the principle of the closest connection with the child and his or her best interests. Thus, according to this rule, the authorities of the forum take protective measures based on their substantive law, but paragraph 2 provides for an exception clause, allowing, in exceptional cases, the law of another State with which the situation has a closer connection to be applied or taken into consideration, insofar as the protection of the child's person or property so requires.³³ This exception clause is based on the best interests of the child and not on the closest connection, as is

²⁹ Henry Setright QC and others (n 25) 97.

³⁰ Lima Pinheiro (n 15) 85–89.

³¹ Before the Convention entered into force in the Portuguese legal system, the conflictual system of internal source, based on the Civil Code, was in force. Under Article 57 of the Portuguese Civil Code, the common national law of the parents applies to relations between parents and children and, in the absence of such law, the law of the common habitual residence applies. If the parents have different habitual residences, the personal law of the child applies, therefore, as a rule, their national law, in accordance with Article 31(1) of the same Code. The main idea of the Portuguese conflict legislator was to ensure that family society is regulated by a single law, as highlighted in *Ibid* 675. On the other hand, according to Article 57(2), if parentage is established in relation to only one of the parents, the personal law (ie nationality) of that parent applies; if filiation is established in relation to both parents, but one of them has died, the personal law (again, of nationality) of the surviving parent applies. The fact that Article 57 does not use connecting factors that are fixed in time is justified by the fact that it concerns the content of a personal legal relationship, which, in the opinion of the Portuguese legislator, should be regulated by current personal law, ie, by the law to which the persons are connected at the time when they have to fulfil the duties or exercise the rights arising from the personal legal situation to which they are subject. For further discussion on this subject, see J. Baptista Machado, *Lições de Direito Internacional Privado* (3rd edn, Coimbra: Almedina, 2017) 430–33.

³² von Bar and Mankowski (n 19) 735.

³³ Paul Lagarde, 'La nouvelle Convention de La Haye sur la protection des mineurs' (1997) 2 *Revue critique de droit international privé* 217, 230–31.

usually the case,³⁴ and this other closer law does not need to be from a Contracting State.³⁵ The termination of a protective measure is also subject to *lex fori*.³⁶ Finally, Article 15(3) governs the issue of changing the child's habitual residence: the law of the new State of habitual residence shall, from the moment of the change, govern the conditions for the application of the measures taken by the State of the previous habitual residence. This solution in the Convention is justified by the simple fact that, if the measures previously taken are terminated, the child will be unprotected, at least until new measures are taken, so Article 15(3) eliminates the need for automatic modification.³⁷

The second set of conflict rules, which requires the application of the law of habitual residence, replaces the internal conflict system based on the Portuguese Civil Code. The attribution and extinction of parental responsibility *ope legis*, as well as its exercise, are governed by the law of the child's habitual residence, in accordance with Articles 16 and 17. There is, therefore, in principle, a coincidence between the law governing parental responsibility and the law applicable to the establishment of protective measures.³⁸ Under Article 16(3) and (4), even if the child changes his or her habitual residence, the parental responsibility existing under the law of his or her previous habitual residence remains, and if the child changes his or her habitual residence to a State which, *ope legis*, attributes parental responsibility to a person who does not yet have it, that responsibility will be governed by the law of the new habitual residence. This means that a change of habitual residence cannot extinguish parental responsibility, but it can attribute it,³⁹ which provides protection against unexpected changes of residence.⁴⁰ Parental responsibility may, pursuant to Article 18, be withdrawn or the conditions for its exercise may be modified by any competent authority under the Convention to take protective measures.

Regarding general matters, Article 20 provides for the universal application of these conflict rules. With regard to *renvoi*, Article 21 establishes, in principle, a material reference. However, in the event of the attribution or termination of parental responsibility, where Article 16 refers to the law of a non-contracting State and the conflict rules of that State designate the law of another non-contracting State which considers itself to have jurisdiction, *renvoi* in the form of a transfer of jurisdiction is permitted.⁴¹ Article 22 contains a public policy reservation clause, subject, however, to consideration of the 'best interests of the child'. Still within the scope of general issues, it should be noted that this Convention does not allow for the application of overriding mandatory provisions of the State of the forum.⁴²

Articles 47 and 48 address the issue of States with more than one legal territorial system. According to the first of these articles, the general idea is that, in States with more than one legal territorial system, the elements of territorial connection should be located in the

³⁴ Autorità Garante per l'Infanzia e l'Adolescenza, *La Convenzione dell'Aja del 1996. Prontuario per l'operatore giuridico* (Marchesi Grafiche Editoriali SpA, 2018) 91, available at <<https://www.garanteinfanzia.org/sites/default/files/2020-03/convenzione-aja-1996-prontuario-operatore-giuridico.pdf>> accessed 27 May 2025.

³⁵ Lowe (n 17) 197. In order to apply the exception clause, two elements must be verified: (i) the best interests of the child (this is the material element, reflected in the circumstance that the application of the law of another State is more advantageous for the child) and (ii) it must be the law of a State with which the situation has a close connection (this is the territorial element), as stated by Calvo Caravaca and Carrascosa González (n 24) 2150. The clause must be interpreted and applied restrictively, and may only be invoked in exceptional and duly justified cases (eg in the case of authorization requested from the authorities of the State of the child's habitual residence to sell property belonging to the minor located in another State, it is appropriate to apply the *lex rei sitae*; it is appropriate to apply the national law of the child in the protection of foreign children who are returning immediately to their country), as stated in *Ibid*.

³⁶ Bar and Mankowski (n 19) 737.

³⁷ *Ibid*, 738.

³⁸ Lagarde (n 33) 230–31.

³⁹ Lowe (n 17) 197.

⁴⁰ von Bar and Mankowski (n 19) 740.

⁴¹ Lima Pinheiro (n 15) 94.

⁴² Calvo Caravaca and Carrascosa González (n 24) 2142.

territorial unit of those States where they are actually located (eg if the subject is habitually resident in the UK, but specifically in Scotland, Scottish law is applicable). In the case of nationality, paragraph 4 refers to the territorial region designated by the law of the sovereign State, but, in the absence of such rules, reference is made to the region with which the child has the closest connection. On the other hand, Article 48 deals with the problem in the specific case of the applicable law, that is, in the case of Article 16. Under Article 48, the first step to be taken when the law of a State with more than one legal territorial system is applicable is to check whether there are rules in force in that State identifying which sub-system is competent; in the absence of such rules, Article 47 applies. Finally, Article 49 deals with the legal systems of States with more than one personal legal system, requiring the application of the rules in force in the State whose law is applicable; in the absence of such rules, the law of the system with which the child has the closest connection applies.⁴³

About the recognition of decisions taken by authorities of other Contracting States, the Convention provides for a system of automatic recognition in Article 23(1). Enforcement, that is, the attribution of enforceability to measures taken by the competent authorities of a Contracting State in another Contracting State, depends on a declaration of enforceability or registration in that other State, in accordance with the procedure laid down in the law of that State (Article 26(1)), and the procedure must be simple and rapid (Article 26(2)). Recognition of effects and the declaration of enforceability or registration may only be refused on the grounds listed in Article 23(2), which include, for example, lack of jurisdiction of the authority and violation of public policy in the requested State. Finally, Article 27 excludes review of the merits of the measure.⁴⁴ The aim of this regime is to reduce further litigation by ensuring that priority is given to decisions taken by the authorities of the Contracting State in which the child is habitually resident.⁴⁵

Article 40 of the Convention provides for the possibility for the holder of parental responsibility to request the authority of the Contracting State of the child's habitual residence or where a protection measure has been taken to provide him or her with a certificate, 'indicating the capacity in which that person is entitled to act and the powers conferred upon him or her'. This certificate facilitates the cross-border movement of children.⁴⁶

At this point, we can summarize the system of jurisdiction currently in force in Portugal as follows: (i) as a rule, the Brussels II ter Regulation applies to the jurisdiction of the authorities, but if the authority of a Member State does not have jurisdiction, jurisdiction is governed by the internal rules of the Portuguese law; (ii) however, in relations with third States that are parties to the Convention, the Convention applies if the child is not habitually resident in a Member State, and the application of the Convention or the Regulation is controversial in cases where the child is resident in a Member State; (iii) in relations with third States that are only contracting parties to the 1961 Hague Convention on the Protection of Minors,⁴⁷ the latter applies if the child is habitually resident in a contracting State. On the other hand, in the case of determining the applicable law, as a rule, the 1996 Convention applies; in relations with States that are only contracting parties to the 1961 Hague Convention, the regime of the latter applies if the minor is habitually resident in a State that is a contracting party to that instrument. Finally, with regard to the recognition of foreign decisions, (i) if the decisions are made by Member States bound by the Brussels II ter

⁴³ per l'Infanzia e l'Adolescenza (n 34) 121–23.

⁴⁴ Lima Pinheiro (n 15) 95.

⁴⁵ Singapore Academy of Law (n 16) 8.

⁴⁶ di Napoli, 'Something New on the Eastern Front. The Application of the 1996 Hague Child Protection Convention in Italy to Children Fleeing the Russian-Ukrainian War' (2023) 9 *Italian LJ* 711, 719.

⁴⁷ Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants.

Regulation, this is applicable; (ii) if the decisions are made by third States that are contracting parties to the Convention, the regime established by the latter applies; (iii) for decisions of States party to the 1961 Hague Convention, the regime of that Convention applies if the minor is habitually resident in a State party to that instrument; (iv) for other decisions, the internal regime applies. This reveals a highly complex regime of sources, which gives rise to difficulties of delimitation and application, which could have been mitigated if the matter had been left to the Hague Conventions.⁴⁸

III. FACTUAL BACKGROUND UNDERLYING THE JUDGMENT OF THE COIMBRA COURT OF APPEAL OF 24 OCTOBER 2023, CASE NO. 4/23.SYRCBR

In this judgment reviewing a foreign judgment, the first fact to note is that the mother, formerly resident in the UK, applied in that State for authorization to establish habitual residence in Portugal with her minor child. The competent English court was the Family Court in the Central Family Court in London, which authorized the mother to establish her son's habitual residence in Portugal, decreeing, to that extent, the contact arrangements with the father (ie the times of the year that the child would spend with his father), as well as video calls twice a week.

Subsequently, in Portugal, an action was proposed to regulate the exercise of parental responsibilities, establishing (i) the child's residence in Portugal with the mother, periods of the year to be spent with the father, and video calls twice a week; (ii) the joint exercise of parental responsibilities in matters of particular importance in the child's life (eg safety, health, and education), except in cases of manifest urgency; (iii) in the child's everyday life, the exercise of parental responsibilities would be the responsibility of the parent with whom the child was at the time, without this contradicting the mother's most relevant educational guidelines; (iv) the father's obligation to pay child support. However, no agreement was reached on the possibility of the father travelling abroad with the child during the holidays, a matter that had been agreed in the English decision, which provided for the possibility of the child spending the holidays with his father abroad.

In this regard, the father petitioned for confirmation of the judgment handed down in the UK. The mother, wishing to prevent the father from taking their son abroad, as had been permitted by the court in London, opposed recognition of the foreign judgment, arguing that the requirements of the Brussels IIa Regulation had not been met, now Brussels II ter Regulation. To this end, the mother alleges (i) a violation of the Portuguese State's international public policy, insofar as the English judgment is silent on the regulation of parental responsibilities and on the provision of maintenance by the father and (ii) the incompatibility of this decision with the subsequent decision of the Portuguese court.

It is therefore necessary to analyse the decision of the Coimbra Court of Appeal.

IV. REVIEW OF THE JUDGMENT OF THE COIMBRA COURT OF APPEAL

1. Determination of the applicable international instrument

The first step taken by the court, quite rightly, was to determine the legal basis on which it should assess the arguments put forward by the child's mother, given that, at the time of this decision, the UK was no longer a Member State of the EU, which raises the question of whether the European Regulations invoked by the mother are applicable. The solution must

⁴⁸ Lima Pinheiro (n 15) 96–97.

be found in the Agreement on the withdrawal of the UK of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.⁴⁹ Under Article 67(1)(c) and (2)(b) of that Agreement, with the transition period having ended on 31 December 2020—in accordance with Article 126—on the date of this decision (the English decision dates from December 2021 and the proceedings in Portugal began in 2023), the European Regulations were no longer applicable in relations between Member States and the UK. Consequently, as of 1 January 2021, the 1996 Hague Convention on the Protection of Children is reinstated, since Portugal and the UK are both Contracting States. The Coimbra Court of Appeal was therefore correct in ruling out the application of any of the Regulations. Nevertheless, as is well known, *jura novit curia*, that is, matters of law are the responsibility of the court, which is therefore always responsible for assessing the grounds alleged in the light of the instrument that has been found to be applicable.⁵⁰

2. About the possible violation of the Portuguese State's international public policy reservation

Once the international instrument on which the child's mother's argument should be assessed had been established, the court began by examining the possible violation of public policy. To this end, the Court of Appeal began by pointing out that, within the scope of this Convention, and in accordance with Article 23(2)(d), when assessing the violation of public policy, it is important to consider the best interests of the child. This means, as this judgment points out, that an integrated analysis of public policy and the interests of the child is required, and therefore a clear conflict with the public policy of the Portuguese State is not sufficient to prevent recognition, insofar as it is necessary to weigh up the situation, taking into account the best interests of the child. The court points out that 'what is relevant is not whether the decision to be recognised offends the public policy of the requested State, *but whether its recognition would result in such a violation*' (*our emphasis*). In the same vein, the court draws a fine line between the violation of public policy and the prohibition on reviewing the merits of a foreign decision, as set out in Article 27 of this Convention. For there to be an effective violation of the public policy reservation clause, there must be a manifest violation of a rule considered essential in the legal order of the forum or of a fundamental right (eg the prohibition of slavery), which will occur when *recognition* leads to an intolerable or shocking result.⁵¹ Therefore, it is not the decision itself that counts for this assessment, but rather the result that its recognition would lead to.⁵² Given this outcome, the Convention nevertheless imposes, in a second stage, a judgment on the interests of the child. In particular, the Coimbra Court of Appeal emphasizes that talking about the interests of the child is equivalent to talking about the rights of the child, where the right to 'maintain a personal and direct relationship with both parents and, in the event of parental separation, a close relationship with the parent with whom they do not usually reside, which guarantees the presence, to the greatest extent and intensity possible, of that same parent in their life'.

Having established a general framework, the court found that there had been no violation of public policy. To this end, it began by recalling that English domestic law was the applicable law,

⁴⁹ Available for consultation at <<https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A12019W/TXT%2802%29>> accessed 16 June 2025.

⁵⁰ Article 5(3) of the Portuguese Code of Civil Procedure. cf Miguel Teixeira de Sousa, *A Ação Declarativa Comum – À Luz do Código de Processo Civil de 2013* (4th edn, Coimbra: Gestlegal, 2017) 365. In this regard, it is important to remember that *forum regit processum*, which is the internal legal rule on which the court must base its freedom to assess the applicable law, as stated by Machado (n 31) 17–18.

⁵¹ *Ibid*, 259. In the words of Baptista Machado, the vote of confidence that the legislator grants to foreign legislators is conditional on the assumption that these legislators will not dictate rules that are offensive to the most basic principles of justice (as conceived in civilized nations), as stated in *Ibid*, 256.

⁵² A. Ferrer Correia, *Lições de Direito Internacional Privado I* (Almedina, 2000) 483.

in accordance with Articles 15–17 of the Convention. Given that the London court had determined the child's habitual residence and the arrangements for contact with the father, the court considered that the fact that it had not determined maintenance obligations did not constitute a violation of public policy. The court tells us that the absence of a maintenance order does not contravene 'any essential principle of international public policy of the Portuguese State, nor even a mandatory rule of domestic law, and much less the best interests of the child'. Furthermore, the Court of Appeal points out that Article 4(e) of the Convention expressly excludes maintenance obligations from its material scope. Hence, this judgment states that a decision regulating parental responsibilities, in whole or in part, is admissible without, however, setting the amount of maintenance, the way it is to be paid, and the person liable for it. This is so much so that Portuguese domestic law itself, in Article 1879 of the Civil Code, allows it. This provision of the Portuguese Civil Code provides that parents are not obliged to provide for the maintenance of their children when the latter are able to bear those costs from the proceeds of their work or other income. Thus, the court points out that, even according to the mother's line of argument, the London decision would only be contrary to this Portuguese rule if it were shown that the maintenance owed to the child had not been regulated despite the child's need for it and the known ability of either parent to provide it, which the mother did not even allege. The Court of Appeal resorted here to a comparative assessment of the results of applying the *lex fori* and the competent law, as required in the assessment of the public policy clause,⁵³ to conclude that such incompatibility between the two legal systems does not, in fact, exist at all. Nevertheless, the English court applied its own legislation, it being certain that the Portuguese court was precluded from reviewing either the law applied or the way it was applied by the court of origin, pursuant to Article 27 of the Convention. Moreover, a breach of any domestic legal provision, even a mandatory one, does not, in itself, entail a violation of the public policy reservation. Finally, the judgment notes that the relative civilizational similarity between Portugal and the UK makes cases in which a decision rendered by the courts of one of these States violates the public policy of the other exceedingly rare. Indeed, in the present case, it cannot be said that recognition would genuinely and significantly impair the child's interests, rights, or legal position. In our view, recognition of this decision is irrelevant to the community, as such recognition does not disturb the prevailing legal sentiment, nor is it necessary—let alone urgent—for the judge to expel a so-called 'polluting foreign body' which, in our opinion, does not exist at all.⁵⁴

In this regard, we consider it important not to overlook that, pursuant to Article 23(2)(d) of the Convention, it is not sufficient for the recognition to be contrary to the public policy of the requested State; this provision establishes a higher standard by requiring that the recognition be *manifestly* contrary to public policy.⁵⁵

⁵³ Ibid, 410.

⁵⁴ Helena Mota, 'Desenvolvimentos recentes sobre a aplicação em Portugal da reserva de ordem pública internacional em matéria de relações familiares e sucessórias' (2020–2021) 17/18 RFDUP 449, 460.

⁵⁵ Hague Conference on Private International Law (n 25) 106. The use of the term 'manifestly' is never insignificant: the intention is to draw attention to the fact that public policy can only be invoked in exceptional circumstances, as warned by Konstantinos Rokas, 'Article 31' in Andrea Bonomi and Patrick Wautelet, *Le droit européen des relations patrimoniales de couple—Commentaire des Règlements (UE) n°s 2016/1103 et 2016/1104* (Bruylant, 2021) 1037–38. What is required is that recognition leads to an unacceptable and shocking result in terms of principles and values fundamental to the forum State, in the words of Andrea Bonomi, 'Article 35' in Andrea Bonomi and Patrick Wautelet, *Le droit européen des successions—Commentaire du Règlement n° 650/2012 du 4 juillet 2012* (Bruylant, 2013) 525–26. It is necessary that recognition of the decision shake the community to its foundations, that is, in its prevailing ethical, legal, or religious convictions, in the basic coordinates of its economic and social organization, as can be read in Correia (n 52) 413. Within the scope of the Convention, laws shall be deemed to violate the public policy reservation when they, eg permit corrective measures that are excessively severe or contrary to the principle of equality; arbitrarily deprive one of the parents of parental responsibility; allow parents to renounce parental responsibility and transfer it to third parties; or confer upon a single spouse, in a discriminatory manner, the most significant powers arising from parental responsibility, as stated by Alfonso-Luis Calvo Caravaca and Javier Carrascosa González, *Derecho Internacional Privado*, vol II (16th edn, Comares, 2016) 531–32.

Having taken the first step in assessing a possible breach of the public policy reservation, the court then proceeded to the second stage of the evaluation required under Article 23(2) (d) of the Convention. In this respect, the Coimbra Court of Appeal states that, although no maintenance obligation was established, the recognition of the English decision is consistent with the child's best interests—objectively assessed—given that it settled the difficult issues of the change of habitual residence and the father's contact arrangements. It is in the child's interest that his or her residence be determined, that any change thereof be deemed lawful, and that the child's right to maintain both in-person and remote contact with the father be safeguarded. Accordingly, the court concludes that the English judgment does not undermine the Portuguese State's public policy reservation, as it does not offend any fundamental principle of the national legal order and is, moreover, entirely consistent with the child's best interests. Indeed, legal scholarship has long held that cases in which the public policy exception may successfully be invoked are exceedingly rare, as its application would require that the consequences of recognizing the decision, for the child, be of the utmost seriousness.⁵⁶

3. Regarding the incompatibility between the Portuguese and English decisions

The Coimbra Court of Appeal then examined the second argument put forward by the mother: the incompatibility of the UK decision with the subsequent decision rendered in Portugal. To begin with, we consider it important to note that the mother did not need to initiate any proceedings in Portugal for the custody awarded to her by the English court to be recognized.⁵⁷ The judgment under consideration states that the confirmation of a foreign judgment must be refused when, before a Portuguese court, proceedings identical to those decided by the judgment whose review is sought are pending or have already been decided, unless the action before the foreign court was brought prior to the action being filed in Portugal. Where the action is first brought before a foreign court that has international jurisdiction, and only thereafter commenced in Portugal, the foreign court has priority of jurisdiction. In such a case, even if the action is pending before a Portuguese court or has even been decided by a final and binding judgment of a Portuguese court, there is no impediment to the foreign judgment being confirmed upon request for its review.

Accordingly, in the case at hand, any *res judicata* that may have arisen in Portugal cannot be invoked as a ground for opposing the recognition of the English judgment, given that the English court was competent under Article 5 of the Convention (as we add) and had priority of jurisdiction. Moreover, the Portuguese judgment would, in any event, constitute a potential obstacle to the recognition of the English decision only if it had become final and binding, which was not the case. Furthermore, such an obstacle would in any case require an incompatibility between the two decisions; however, there is one aspect in which they are not incompatible: the child's travel to maintain in-person contact with the father. Conversely, no agreement was reached regarding the possibility of the child travelling abroad with the father during holidays. Nevertheless, the Coimbra Court of Appeal rightly emphasizes that the decision of the London court was subject to automatic recognition under Article 23(1) of the Convention, and therefore, at the time the proceedings were brought in Portugal, it was already producing full legal effects within the domestic legal order. This means that the action started in Portugal is, strictly speaking, a request to modify the regulation of parental responsibilities. On this basis, the court correctly held that the grounds invoked by the mother were unfounded and proceeded to recognize the English decision.

Accordingly, from this moment onwards, we add, if the mother of the child does not allow the father to travel abroad with the child, as was established by the English court, in

⁵⁶ Setright QC and others (n 25) 152.

⁵⁷ Hague Conference on Private International Law (n 25) 103.

accordance with Article 26(1) of the Convention, the father may request, in Portugal, a declaration of enforceability of the London court's decision.⁵⁸ Nevertheless, as the list of grounds for opposing recognition is *exhaustive* under Article 23(2) of the Convention,⁵⁹ we find it difficult to frame this ground of incompatibility between decisions, as invoked by the mother, within the scope of the Convention. Subparagraph (a) of this Article could never apply, since, read together with Article 5(1), the English authority was competent to decide the case. The other subparagraphs are, evidently, inapplicable. For these reasons, automatic recognition could not be refused. Moreover, as follows from Article 14 of the Convention, the mere occurrence of a change in circumstances—in this case, the fact that the child has acquired habitual residence in Portugal—does not entail the cessation of the measures adopted by the English court,⁶⁰ moreover, Article 16(3) provides that, following the child's change of habitual residence to Portugal, the parental responsibility existing under English law (the law of the State of the child's previous habitual residence) remains in force.

V. CONCLUDING REMARKS

In our view, the Coimbra Court of Appeal acted correctly in dismissing the mother's claims. However, we are of the opinion that, once the applicable Convention instrument had been determined, the court should have explicitly stated that the UK was indeed the competent jurisdiction, as it was the State of the child's habitual residence, pursuant to Article 5 of the Convention. It is for this reason that its decision, once rendered final, benefits from automatic recognition in the other Contracting States of this Convention, including Portugal. As we have noted—and which the Portuguese court did not mention—the subsequent establishment of the child's habitual residence in Portugal, under Article 14, does not, in any way, undermine the measures established in London. Moreover, we consider it important to emphasize that the exhaustive list of grounds for refusal of recognition, set out in Article 23(2), is incompatible with the ground of incompatibility between decisions invoked by the mother.

From the perspective of Private International Law, we consider that the judgment lacks a reference to the mitigated effect of the public policy reservation clause. According to this theory, public policy operates differently depending on whether it concerns the creation of a legal situation before the forum or the recognition of a situation validly constituted abroad (eg for the purpose of recognizing rights arising from a polygamous marriage).⁶¹ We are of the opinion that it would have been useful to refer to this doctrine in the case examined by the court, as it is one of those cases in which, if the non-recognition of the legal situation—that is, of the foreign judgment—were even contemplated, it would give rise to more inconvenience than the recognition itself.⁶² But let us be clear: we consider that there is no violation of the public policy reservation. We merely believe that it would have been useful for the court to make it explicit that, even if a violation were to exist, the mitigated effect of this reservation should always be taken into account.

⁵⁸ Ibid, 111.

⁵⁹ Lagarde (n 33) 234. As for the incompatibility between decisions, the possibility of *lis pendens*, enshrined in Article 13 of this Convention, could not even be considered. The Portuguese court should have refrained from ruling if, at the time the action was brought, an identical action was pending in the UK, whose jurisdiction we have already verified. However, this was not the case: at the time the action was brought in Portugal, the English court had already handed down a final decision. Regarding *lis pendens*, see Hague Conference on Private International Law (n 25) 50–53.

⁶⁰ Ibid, 85–87. See, in particular, example 8 (C) provided by this manual in Ibid, 87, whose similarity to the case analysed by the Coimbra Court of Appeal is indisputable, excluding, as can be seen, the opposition of the father, which, in the case of the Court of Appeal, does not seem to exist, but which, from the point of view of the legal solution, does not interfere.

⁶¹ Correia (n 52) 414. For a similar view, see Machado (n 31) 267.

⁶² Correia (n 52) 414–15.

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