Hague 1996 Child Protection Convention

Building the bridge between „habitual residence“ and „substantial connection“

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• Hague Convention 1996 on Child Protection
• Brussels IIA Regulation
• Hague Convention 1980 on the Civil Aspects of International Child Abduction
• European Convention 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children
• Hague Convention 2000 on the International Protection of Adults
**Cases**

**Hague 1996 Convention**

**Outgoing cases**

- In total: 8
- 38% Switzerland
- 12% Denmark
- 12% England/Wales
- 38% Russia

**Incoming cases**

- In total: 5
- 20% Denmark
- 20% Lithuania
- 20% Morocco
- 40% Switzerland
Background

Legal Provisions:

Hague 1996 Child Protection Convention

Jurisdiction

Rule: Art. 5 ➞ habitual residence

Exception: Art. 8 ➞ substantial connection
Case 1:

Facts:

- Emma, 10 years old, German nationality, moves with her parents (German nationality) to Switzerland in 2012
- Behavioural problems, placement in an institution, deprivation of the parents‘ right to determine the place of residence
- Parents moved back to Germany in 2014, Emma should be relocated from institution in Switzerland to institution in Germany
Practical difficulties:

• Art. 33: Cross-border placement
  Procedure of consultation

  Problem: Necessary assumption of costs according to German national law by Swiss authority was not possible
• Art. 8: Transfer of jurisdiction

Problem: German court did not see Art. 8 given (bc of lack of information) and did not accept the transfer, even if Section 2 , lit a) (nationality of the child German) was fullfilled
Solution in the case:

• Reassignment of the right to determine the place of residence to the parents

Problem:
• What if parents still prove to be unsuitable to exercise this right?
• What if the child does not want to live with the parents?
Other possible solutions:

• New request for transfer of jurisdiction
  try to overcome the difficulty that the court did not have enough information about the child and persons who took care

• Involvement of network judges
Case 2:

Facts:

• Ben, 11 years old, German nationality, multiply handicapped, lives with grandparents in Germany

• After death of grandmother, the grandfather is overstrained and the brother (24 years old) living in Switzerland wants to take care of Ben
Practical difficulties:

• Art. 33: Cross-border placement
  Procedure of consultation
  → Problem: Necessary assumption of costs by German Youth Welfare Office was not possible

• Art. 8: Transfer of jurisdiction
  → Problem: Substantial connection to Switzerland? Fact that brother lives there could be seen as not enough
Possible solution:

• Transfer of guardianship to the brother by German court

• In the moment the habitual residence of Ben is in Switzerland the Swiss courts can exercise the supervision according to Art. 15 paragraph 3
Summary

- Consensus on the fact that in those cases the relocation of the child is in its best interest, however opinions about the legal basis and the proceedings differ
• Alternative of cross-border placement often difficult because of assumption of costs

• Transfer of jurisdiction often difficult because of actual lack of substantial connection or court assumes that there is no substantial connection

• Transfer or (re)assignment of parental rights/guardianship bears the risk that the child opposes to this solution, the person in question is not suitable to care for the child
How can we promote to build the bridge between „habitual residence“ and „substantial connection“ in the best interest of the child?
Thank you very much for your attention!