

Case C-435/06

In the proceedings

C

(Reference for a preliminary ruling from the Korkein hallinto-oikeus)

(Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Substantive and temporal scope — Definition of ‘civil matters’ — Decision concerning the taking into care and placement of children outside the family home — Public law measures for child protection)

Opinion of Advocate General Kokott delivered on 20 September 2007 . . . I - 10144

Judgment of the Court (Grand Chamber), 27 November 2007 I - 10169

Summary of the Judgment

1. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Regulation No 2201/2003*

(Council Regulation No 2201/2003, Arts 1(1) and 2(7))

2. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Regulation No 2201/2003*
 (Act of Accession of 1994, Joint Declaration No 28; Council Regulation No 2201/2003)

1. Article 1(1) of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation No 1347/2000, as amended by Regulation No 2116/2004, is to be interpreted to the effect that a single decision ordering a child to be taken into care and placed outside his original home in a foster family is covered by the term ‘civil matters’ for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.

on parental responsibility fall within the scope of that regulation. Parental responsibility is given a broad definition in Article 2(7) of the regulation, inasmuch as it includes all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. It is irrelevant in that respect whether parental responsibility is affected by a protective measure taken by the State or by a decision which is taken on the initiative of the person or persons with rights of custody.

(see paras 46-50, 53, operative part 1)

The term ‘civil matters’ within the meaning of that provision, must be interpreted autonomously. Only the uniform application of Regulation No 2201/2003 in the Member States, which requires that the scope of that regulation be defined by Community law and not by national law, is capable of ensuring that the objectives pursued by that regulation, one of which is equal treatment for all children concerned, are attained. According to the fifth recital of Regulation No 2201/2003, that objective can only be safeguarded if all decisions

2. Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation No 1347/2000, as amended by Regulation No 2116/2004, is to be interpreted as meaning that harmonised national legislation on the recognition and enforcement of administrative decisions on the

taking into care and placement of persons, adopted in the context of Nordic Cooperation, may not be applied to a decision to take a child into care that falls within the scope of that regulation.

Cooperation between the Nordic States on the recognition and enforcement of administrative decisions on the taking into care and placement of persons does not appear amongst the exceptions listed exhaustively in Regulation No 2201/2003.

Nor is that conclusion invalidated by Joint Declaration No 28 on Nordic Cooperation, annexed to the Treaty concerning the conditions of accession of the Republic of Austria, the Republic

of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded. According to that declaration, those States which are members of Nordic Cooperation and members of the Union have undertaken to continue that cooperation in compliance with Community law. Accordingly, that cooperation must respect the principles of the Community legal order. In that regard, a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation.

(see paras 57, 61, 63-66,
operative part 2)