

# Case C-523/07

## Proceedings brought by

### A

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

(Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Regulation (EC) No 2201/2003 — Substantive scope — Definition of ‘civil matters’ — Decision relating to the taking into care and placement of children outside the family home — Child’s habitual residence — Protective measures — Jurisdiction)

Opinion of Advocate General Kokott delivered on 29 January 2009 . . . . . I - 2808

Judgment of the Court (Third Chamber), 2 April 2009 . . . . . I - 2831

## Summary of the Judgment

1. *Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Regulation No 2201/2003 — Scope — Definition of ‘civil matters’*  
(Council Regulation No 2201/2003, Recitals 5 and 10, Arts 1(1) and (2)(d) and 2(7))
2. *Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Regulation No 2201/2003 — Definition of ‘habitual residence’ within the meaning of Article 8(1)*  
(Council Regulation No 2201/2003, Recital 12 and Art. 8(1))

3. *Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Regulation No 2201/2003 — Provisional and protective measures*  
(Council Regulation No 2201/2003, Arts 20, 53 and 55(c))
4. *Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Regulation No 2201/2003 — Jurisdiction*  
(Council Regulation No 2201/2003, Art. 53)

1. Article 1(1) of Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation No 1347/2000, must be interpreted as meaning that a decision ordering that a child be immediately taken into care and placed outside his original home 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.

(see para. 29, operative part 1)

2. Since Article 8(1) of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation No 1347/2000, does not make any express reference to the law of the Member States for the purpose of determining the meaning and scope of the concept of ‘habitual residence’, the determination of that concept must be made in the light of the context of the provisions

and the objective of the regulation, in particular that which is apparent from Recital 12 in the preamble, according to which the grounds of jurisdiction which it establishes are shaped in the light of the best interests of the child, in particular on the criterion of proximity. Thus, in addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.

Therefore, the concept of ‘habitual residence’ under Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family’s move to that State, the child’s nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the

habitual residence of the child, taking account of all the circumstances specific to each individual case.

(see paras 33, 35, 38, 44, operative part 2)

3. A protective measure, such as the taking into care of children, may be decided by a national court under Article 20 of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation No 1347/2000, if the following conditions are satisfied:

- the measure must be urgent;
- it must be taken in respect of persons in the Member State concerned; and
- it must be provisional.

The taking of that measure, adopted in the best interests of the child and its binding nature are determined in accordance with national law. After the protective measure has been taken, the national court is not required to transfer the case to the court of another Member State having jurisdiction. However, since provisional or protective measures are temporary, circumstances

related to the physical, psychological and intellectual development of the child may require early intervention by the court having jurisdiction in order for definitive measures to be adopted. Therefore, in so far as the protection of the best interests of the child so require, the national court which has taken provisional or protective measures must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

(see paras 47, 56, 59, 64, 65, operative part 3)

4. Where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in national matters and in the matters of parental responsibilities, repealing Regulation No 1347/2000, the court of another Member State having jurisdiction.

(see para. 71, operative part 4)