

Case C-256/09

Bianca Purrucker

v

Guillermo Vallés Pérez

(Reference for a preliminary ruling
from the Bundesgerichtshof)

(Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in matters of parental responsibility — Regulation (EC) No 2201/2003 — Provisional, including protective, measures — Recognition and enforcement)

Opinion of Advocate General Sharpston delivered on 20 May 2010 I - 7356
Judgment of the Court (Second Chamber), 15 July 2010 I - 7408

Summary of the Judgment

1. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003*
(Council Regulation No 2201/2003, Arts 8 to 14)

2. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003*
(Council Regulation No 2201/2003, Arts 20 and 39)
3. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003*
(Council Regulation No 2201/2003, Arts 20 to 27)

1. Where the substantive jurisdiction, in accordance with Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, of a court which has taken provisional measures is not, plainly, evident from the content of the judgment adopted, or where that judgment does not contain a statement, free of any ambiguity, of the grounds in support of the substantive jurisdiction of that court, with reference made to one of the criteria of jurisdiction specified in Articles 8 to 14 of that regulation, it may be inferred that that judgment was not adopted in accordance with the rules of jurisdiction laid down by that regulation. None the less, that judgment may be examined in the light of Article 20 of the regulation, in order to determine whether it falls within the scope of that provision.
2. In view of the importance of the provisional measures, whether adopted by a court which has substantive jurisdiction or not, which may be ordered in matters of parental responsibility and, in particular, in view of their possible consequences for young children, especially in relation to separated twins, and given the fact that, as it happens, the court which adopted the measures issued a certificate pursuant to Article 39 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 (EC) No 1347/2000, when the force of the provisional measures covered by that certificate was subject to the condition that substantive proceedings be brought within 30 days, it is vital that a person affected by such a procedure, even if that person has been heard by the court which adopted the provisional measures, be able to take steps to bring an appeal against the judgment ordering those measures in order, before a court other than the court which adopted the measures and capable of ruling promptly, inter alia, to challenge the

(see para. 76)

substantive jurisdiction which the court that adopted the provisional measures attributed to itself, or, if it is not evident from the judgment that that court had, or had attributed to itself, substantive jurisdiction on the basis of that regulation, to dispute that the conditions set out in Article 20 of that regulation were satisfied, namely:

- the measures concerned must be urgent;
- they must be taken in respect of persons or assets in the Member State where those courts are situated; and
- they must be provisional.

It should be possible to bring that appeal without the fact of doing so creating any legal presumption whatsoever that the person bringing the appeal accepts the substantive jurisdiction which the court which adopted the provisional measures may have attributed to itself.

(see paras 77, 97, 98)

3. The provisions laid down in Article 21 et seq. 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, do not apply to provisional measures, relating to rights of custody, falling within the scope of Article 20 of that regulation. It was not the intention of the Union legislature that there should be such applicability and that is also clear from the legislative history and from the equivalent provisions of earlier instruments such as Regulation No 1347/2000 and the Brussels II Convention. Further, to apply in all other Member States, including the State which has substantive jurisdiction, the system of recognition and enforcement provided for by Regulation No 2201/2003 in relation to provisional measures would create a risk of circumvention of the rules of jurisdiction laid down by that regulation and of ‘forum shopping,’ which would be contrary to the objectives pursued by that regulation and, in particular, to the objective of making sure that the best interests of the child are taken into consideration by ensuring that decisions concerning the child are taken by the court geographically close to his habitual residence, that court being regarded by the European Union legislature as the court best placed to assess the measures to be taken in the interests of the child.

(see paras 84, 91, operative part)