

# Case C-497/10 PPU

**Barbara Mercredi**

**v**

**Richard Chaffe**

(Reference for a preliminary ruling  
from the Court of Appeal (England and Wales) (Civil Division))

(Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 —  
Matrimonial matters and parental responsibility — Child whose parents  
are not married — Concept of ‘habitual residence’ of an infant —  
Concept of ‘rights of custody’)

View of Advocate General Cruz Villalón delivered on 6 December 2010 . . . I - 14312

Judgment of the Court (First Chamber), 22 December 2010 . . . . . I - 14358

## 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 — Concept of ‘habitual residence’ of a child*  
(Council Regulation No 2201/2003, Arts 8, 10 and 13)
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 — Jurisdiction in the matters of parental responsibility — Final judgment of*

*a court of a Member State refusing, under the Hague Convention of 25 October 1980, an application for prompt return of a child to another Member State — Effect on judgments to be delivered subsequently in that other Member State in respect of actions previously brought and still pending there*

*(Council Regulation No 2201/2003, Art. 19)*

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 — Jurisdiction in the matters of parental responsibility — Lis pendens*  
*(Council Regulation No 2201/2003, Art. 19)*

1. The concept of ‘habitual residence’, for the purposes of Articles 8 and 10 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, must be interpreted as meaning that such residence corresponds to the place that reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State, other than that of her habitual residence, to which she has been removed, the factors that must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother’s move to that State and, second, with particular

reference to the child’s age, the mother’s geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case.

If the application of the abovementioned tests were to lead to the conclusion that the child’s habitual residence cannot be established, which court has jurisdiction would have to be determined on the basis of the criterion of the child’s

presence, under Article 13 of Regulation No 2201/2003.

(see paras 56-57, operative part 1)

2. Judgments of a court of a Member State refusing to order the prompt return of a child under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction to the jurisdiction of a court of another Member State have no effect on the judgments that have to be delivered in that other Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.

Under Article 19 of the 1980 Hague Convention, such judgments have no effect on determining the merits of rights of custody, even if those judgments have become final.

(see paras 65-66, 71, operative part 2)

3. Non-final judgments of a court of a Member State concerning parental responsibility for a child have no effect on the judgments that have to be delivered in another Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.

In such a case of conflict between two courts of different Member States, before which, on the basis 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, proceedings relating to parental responsibility over a child with the same cause of action have been brought, Article 19(2) of that regulation is applicable. Under that article, the court second seised is to stay its proceedings until such time as the jurisdiction of the court first seised is established and has therefore no power to rule on the action before it.

(see paras 68-69, 71)