



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

21 October 2015*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Scope — Article 1(1)(b) — Attribution, exercise, delegation, restriction or termination of parental responsibility — Article 2 — Concept of parental responsibility — Dispute between parents on travel by their child and the issue of a passport to the child — Prorogation of jurisdiction — Article 12 — Conditions — Acceptance of the jurisdiction of the courts seised — Non-appearance of the defendant — Jurisdiction not contested by the defendant's legal representative appointed by the courts seised of their own motion)

In Case C-215/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), made by decision of 11 May 2015, received at the Court on the same date, in the proceedings

Vasilka Ivanova Gogova

v

Ilia Dimitrov Iliev,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal and K. Jürimäe (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: I. Illéssy, Administrator,

having regard to the decision of the President of the Court of 3 July 2015 that the case be dealt with under the accelerated procedure, in accordance with Article 23a of the Statute of the Court of Justice of the European Union and Article 105(1) of the Rules of Procedure of the Court,

having regard to the written procedure and further to the hearing on 9 September 2015,

after considering the observations submitted on behalf of:

- the Czech Government, by J. Vláčil, acting as Agent,
- the Spanish Government, by A. Sampol Pucurull, acting as Agent,

* Language of the case: Bulgarian.

— the European Commission, by S. Petrova and M. Wilderspin, acting as Agents,
after hearing the Advocate General,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 1(1)(b), 2(7), 8(1) and 12(1)(b) of Council Regulation (EC) No 2201/2003 of 27 November 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 (OJ 2003 L 338, p. 1).
- 2 The request has been made in proceedings between Ms Gogova and Mr Iliev concerning the renewal of their child's passport.

Legal context

EU law

- 3 Recitals 5 and 12 in the preamble to Regulation No 2201/2003 state:
'(5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.
...
(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.'
- 4 Article 1 of that regulation, 'Scope', provides:
'1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:
...
(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.
2. The matters referred to in paragraph 1(b) may, in particular, deal with:
(a) rights of custody and rights of access;
(b) guardianship, curatorship and similar institutions;
(c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
(d) the placement of the child in a foster family or in institutional care;

(e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

3. This Regulation shall not apply to:

- (a) the establishment or contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) measures taken as a result of criminal offences committed by children.'

5 Article 2(7) of that regulation defines the term 'parental responsibility' as '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. The term shall include rights of custody and rights of access'.

6 Article 8 of the regulation, 'General jurisdiction', reads as follows:

'1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of [Article] 12.'

7 Article 12 of the regulation, 'Prorogation of jurisdiction', provides:

'1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

...

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

- (b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.

...'

8 Article 16 of the regulation, 'Seising of a Court', provides:

'1. A court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.'

Bulgarian law

The Law on Bulgarian identity documents

- 9 Article 45(1) of the Law on Bulgarian identity documents (Zakon za balgarskite lichni dokumenti) provides that applications for passports for minors are to be made by their parents in person.
- 10 In accordance with Article 78(1) in conjunction with Article 76(9) of that law, the Minister of the Interior or a person authorised by him may prohibit a child from leaving the territory of the Republic of Bulgaria unless written consent is produced in the form of a notarial act by which the parents authorise their child to travel.

The Family Code

11 Article 127a of the Family Code (Semeen kodeks) provides:

- '1. Questions concerning travel abroad by a child and the issue of the identity documents needed for that purpose are to be decided by common agreement of the parents.
2. Where the parents do not reach agreement as provided for in paragraph 1, the dispute between them shall be resolved by the Rayonen sad (District Court) for the child's current place of residence.
3. Proceedings before the court shall be commenced at the request of either parent. The other parent shall be heard, unless he fails to appear without good reason. The court may take evidence on its own initiative.

...'

The Code of Civil Procedure

12 Article 47 of the Code of Civil Procedure (Grazhdanski protsesualen kodeks) provides:

'1. Where the defendant cannot be found at the address stated in the documents, and no person can be found who agrees to receive service, the server shall affix a notice to the door or letter box of the person concerned; if there is no access to these, the notice is to be posted on the entrance door of the building or in a visible place nearby. If he has access to the letter box, the server shall also place a notice in the letter box.

2. The notice shall state that the documents have been deposited at the court registry if service is by a court employee or officer; that they have been deposited at the offices of the municipality if service is by a municipal employee; and that they may be collected there within two weeks from the date of affixing the notice.

3. Where the defendant does not appear in order to collect a copy of the documents, the court shall require the applicant to provide information on the defendant's registered address, except in the cases referred to in Articles 40(2) and 41(2), in which case the notice is to be added to the documents. If the address stated does not correspond to the permanent or current address of the party, the court shall order service at the permanent or current address in accordance with the procedure laid down in paragraphs 1 and 2.

4. Where the server establishes that the defendant does not reside at the address stated, the court shall instruct the applicant to provide information on the defendant's registered address notwithstanding the affixing of the notice mentioned in paragraph 1.

5. Service is deemed to have taken place on expiry of the period prescribed for collecting it by the court registry or municipal offices.

6. On establishing that service has taken place correctly, the court shall order the document served to be added to the documents in the case, and shall appoint a special representative at the applicant's expense.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 According to the order for reference, Ms Gogova and Mr Iliev have a child who was aged 10 at the material time. The child, a Bulgarian national, resides with her mother in Milan (Italy). The parents, both Bulgarian nationals, live apart. Mr Iliev also resides in Italy.

14 Ms Gogova wished to renew her child's passport, which had expired on 5 April 2012, in order in particular to travel with her to Bulgaria.

15 Under Bulgarian law, decisions on travel by a minor child and obtaining a passport in the child's name are to be taken by common agreement of the parents. In addition, an application for a passport for such a child must be made by both parents together to the competent administrative authorities.

16 As Mr Iliev did not cooperate with Ms Gogova in obtaining a new passport for their child, she made an application to the Rayonen sad – Petrich (District Court, Petrich, Bulgaria) for that court to resolve the disagreement between her and Mr Iliev concerning their child's ability to travel abroad and the issue of a new passport to her.

- 17 As it was not possible to serve the document instituting the proceedings on Mr Iliev, who could not be found at his reported address, the court appointed a legal representative to represent him on the basis of Article 47(6) of the Code of Civil Procedure. The representative did not contest the jurisdiction of the Bulgarian courts, and stated that the dispute should be resolved in accordance with the best interests of the child.
- 18 By order of 10 November 2014, the Rayonen sad – Petrich held that Ms Gogova’s application had been made under Article 127a of the Family Code and concerned parental responsibility for a child within the meaning of Article 8 of Regulation No 2210/2003. Finding that the child in question was habitually resident in Italy, the court declared that it lacked jurisdiction to hear the case and closed the proceedings.
- 19 Ms Gogova appealed against that order to the Okrazhen sad – Blagoevgrad (Regional Court, Blagoevgrad, Bulgaria). That court upheld the order and found that there was no ‘prorogation of jurisdiction’ of the Bulgarian courts within the meaning of Article 12(1)(b) of Regulation No 2201/2003. According to that court, although Mr Iliev had not challenged the jurisdiction of those courts, he had taken part in the proceedings only through the representative appointed by the court in his absence.
- 20 Ms Gogova thereupon appealed to the Varhoven kasatsionen sad (Supreme Court of Cassation). That court considers that the outcome of the appeal depends, in the first place, on whether the judicial proceedings provided for in Article 127a(2) of the Family Code, under which the lack of agreement of one of the parents concerning travel abroad by their child and the issue of a passport for the child may be remedied by a decision of a court, are covered by Regulation No 2201/2003, in which case the jurisdiction of the courts has to be determined on the basis of the provisions of that regulation. In particular, the question arises whether such proceedings concern ‘parental responsibility’ within the meaning of Article 2(7) of that regulation. According to the court, it is also necessary to determine whether that regulation applies to those proceedings, given that under Bulgarian law the judicial decision made in those proceedings must be produced to the Bulgarian administrative authorities in order for the child to be authorised to travel abroad or be issued with a passport.
- 21 In the second place, the Varhoven kasatsionen sad raises the question whether, in the present case, the jurisdiction of the Bulgarian courts may be founded on Article 12(1)(b) of Regulation No 2201/2003, in view of the fact that the legal representative appointed by those courts to represent Mr Iliev did not challenge their jurisdiction to hear the main proceedings.
- 22 In those circumstances, the Varhoven kasatsionen sad decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- (1) Does the possibility, provided for by law, for civil courts to resolve a dispute between parents concerning their child’s ability to travel abroad and the issue of identity documents, where the applicable substantive law requires that those parental rights be exercised jointly with regard to the child, constitute a matter relating to “the attribution, exercise, delegation, restriction or termination of parental responsibility” within the meaning of Article 1(1)(b) in conjunction with Article 2(7) of [Regulation No 2201/2003] to which Article 8(1) of that regulation applies?
 - (2) Do grounds establishing international jurisdiction apply in civil cases concerning parental responsibility where the decision replaces a legal act central to an administrative procedure concerning the child and the applicable law provides that this procedure must take place in a specific EU Member State?
 - (3) Must it be assumed that there is a prorogation of jurisdiction within the meaning of Article 12(1)(b) of Regulation ... No 2201/2003 where the defendant’s representative has not challenged the jurisdiction of the court but where that representative has not been authorised by

the defendant but rather appointed by the court owing to the difficulty in notifying the defendant in order for him to take part in the proceedings in person or through a representative instructed by him?’

Procedure before the Court

- 23 At the request of the referring court, the designated Chamber examined the need to deal with the present case under the urgent preliminary ruling procedure provided for in Article 107 of the Court’s Rules of Procedure. After hearing the Advocate General, the Chamber decided not to accede to that request.
- 24 By order in *Gogova* (C-215/15, EU:C:2015:466), the President of the Court decided to determine the present case pursuant to the expedited procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 105(1) of the Rules of Procedure.

Consideration of the questions referred

Questions 1 and 2

- 25 By its first and second questions, which should be considered together, the referring court asks essentially whether an action in which one parent asks the court to remedy the lack of agreement of the other parent to their child travelling outside his Member State of residence and a passport being issued in the child’s name is within the material scope of Regulation No 2201/2003, even though the decision in that action will have to be taken into account by the authorities of the Member State of which the child is a national in the administrative procedure for the issue of that passport.
- 26 As regards the material scope of Regulation No 2201/2003, it is apparent from Article 1(1)(b) of the regulation that it applies, whatever the nature of the court or tribunal, in civil matters relating inter alia to the attribution, exercise, delegation, restriction or termination of parental responsibility. In this connection, the expression ‘civil matters’ must not be understood restrictively but as an autonomous concept of EU law, covering in particular all applications, measures or decisions in matters of ‘parental responsibility’ within the meaning of that regulation, in accordance with the objective stated in recital 5 in its preamble (see, to that effect, judgment in *C*, C-435/06, EU:C:2007:714, paragraphs 46 to 51).
- 27 The concept of ‘parental responsibility’ is given a broad definition in Article 2(7) of Regulation No 2201/2003, in that 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 (judgments in *C*, C-435/06, EU:C:2007:714, paragraph 49, and *C*, C-92/12 PPU, EU:C:2012:255, paragraph 59). Moreover, while Article 1(2) of that regulation contains a list of matters covered by the regulation as ‘parental responsibility’, the list is not exhaustive but is only to be used as a guide, as is shown by the use of the words ‘in particular’ (judgments in *C*, C-435/06, EU:C:2007:714, paragraph 30, and *C*, C-92/12 PPU, EU:C:2012:255, paragraph 63).
- 28 To determine whether an application falls within the scope of Regulation No 2201/2003, the focus must be on the object of the application (see, by analogy, relating to the ‘status or legal capacity of natural persons’ within the meaning of Article 1(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), judgment in *Schneider*, C-386/12, EU:C:2013:633, paragraphs 29 and 30, and, relating to the concept of ‘social security’ within the meaning of that provision, judgment in *Baten*, C-271/00, EU:C:2002:656, paragraphs 46 and 47).

- 29 As regards an action such as that in the main proceedings, it appears from the order for reference that in that action the court will have to rule on the child's need to obtain a passport and the applicant parent's right to apply for that passport and travel abroad with the child without the agreement of the other parent. The object of such an action is therefore the exercise of 'parental responsibility' for that child within the meaning of Article 1(1)(b) in conjunction with Article 2(7) of Regulation No 2201/2003.
- 30 Furthermore, an action such as that in the main proceedings does not fall within any of the exceptions listed exhaustively in Article 1(3) of that regulation.
- 31 It follows that such an action is within the scope of Regulation No 2201/2003.
- 32 That conclusion is not called in question by the mere fact that an application such as that at issue in the main proceedings relates to a specific decision concerning a child, not to all the conditions of the exercise of parental responsibility. As noted in paragraphs 26 and 27 above, Regulation No 2201/2003 applies to all decisions in those matters, whether they relate to a particular aspect of parental responsibility or determine its exercise generally.
- 33 Similarly, the fact that the decision made on the application has to be taken into account by the authorities of the Member State of which the child is a national, in this case the Republic of Bulgaria, in the administrative procedure for issuing a passport in the child's name cannot lead to a different interpretation of Regulation No 2201/2003.
- 34 It suffices to note in this respect that, in any event, a procedure such as that at issue in the main proceedings does not directly involve the issue of a passport, but merely has the consequence that one of the persons exercising parental responsibility for the child may apply for a passport in the child's name without the participation, presence or agreement of the other person exercising parental responsibility, without prejudice to the other conditions laid down by Bulgarian law for the issue of such a document.
- 35 In the light of the above considerations, the answer to Questions 1 and 2 is that an action in which one parent asks the court to remedy the lack of agreement of the other parent to their child travelling outside his Member State of residence and a passport being issued in the child's name is within the material scope of Regulation No 2201/2003, even though the decision in that action will have to be taken into account by the authorities of the Member State of which the child is a national in the administrative procedure for the issue of that passport.

Question 3

- 36 The third question concerns the interpretation of Article 12(1) of Regulation No 2201/2003. That provision provides that, subject to certain conditions, the courts of a Member State hearing an application for divorce, legal separation or annulment of marriage are to have jurisdiction in any matter relating to parental responsibility connected with that application.
- 37 However, it does not appear from the order for reference or the observations submitted to the Court that the referring court is hearing such a matrimonial application in the present case.
- 38 On the other hand, Article 12(3) of Regulation No 2201/2003 establishes a prorogation of jurisdiction rule which allows the courts of a Member State other than that in which the child is habitually resident to hear applications in matters of parental responsibility concerning that child, even if no matrimonial proceedings are pending before those courts (see, to that effect, judgment in *L*, C-656/13, EU:C:2014:2364, paragraphs 45 and 52).

- 39 Consequently, the third question must be understood as asking essentially whether Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that the jurisdiction of the courts seised of an application in matters of parental responsibility may be regarded as having been ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of that provision solely because the legal representative of the defendant, appointed by those courts of their own motion in view of the impossibility of serving the document instituting proceedings on the defendant, has not pleaded the lack of jurisdiction of those courts.
- 40 In accordance with Article 12(3)(b) of Regulation No 2201/2003, read in the light of Article 16 of the regulation, the courts of a Member State may establish jurisdiction on the basis of the former provision on condition that the existence is shown of an agreement, express or at least unequivocal, on that jurisdiction between all the parties to the proceedings, at the latest at the time when the document instituting the proceedings or an equivalent document is lodged with the court chosen (see, to that effect, judgment in *L*, C-656/13, EU:C:2014:2364, paragraph 56).
- 41 In addition, recital 12 in the preamble to Regulation No 2201/2003 states that the head of jurisdiction provided for in Article 12(3) is an exception to the criterion of proximity, under which it is in the first place for the courts of the Member State of the child’s habitual residence to hear actions concerning parental responsibility for that child, and of which Article 8(1) of the regulation is an expression. As the Advocate General observes in point 64 of his view, that exception is intended to allow the parties a certain autonomy in matters of parental responsibility. The condition that the acceptance of the jurisdiction of the courts seised by all the parties to the proceedings is unequivocal must therefore be interpreted strictly.
- 42 On this point, it should be noted, first, that such acceptance presupposes at the very least that the defendant is aware of the proceedings taking place before those courts. While that awareness is not in itself acceptance of the jurisdiction of the courts seised, an absent defendant on whom the document instituting proceedings has not been served and who is unaware of the proceedings that have been commenced cannot in any event be regarded as accepting that jurisdiction (see, by analogy, with reference to Article 24 of Regulation No 44/2001, judgment in *A*, C-112/13, EU:C:2014:2195, paragraph 54).
- 43 Secondly, the wishes of the defendant in the main proceedings cannot be deduced from the conduct of a legal representative appointed by those courts in the absence of the defendant. Since that representative has no contact with the defendant, he cannot obtain from him the information necessary to accept or contest the jurisdiction of those courts in full knowledge of the facts (see, to that effect, judgment in *A*, C-112/13, EU:C:2014:2195, paragraph 55).
- 44 It follows that, in a situation such as that at issue in the main proceedings, the jurisdiction of the courts seised may not be regarded as ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of Article 12(3) of Regulation No 2201/2003.
- 45 That interpretation cannot be called in question by the right of access to justice or the principles of certainty and of the effectiveness of Regulation No 2201/2003, contrary to the submissions of the Spanish Government before the Court. The Government argues essentially that the inability of the applicant in the main proceedings to obtain a final decision on her application because of the difficulty in serving the defendant in the main proceedings entails a denial of justice that is contrary to that right and those principles.
- 46 However, the interpretation in point 44 above does not deprive an applicant, in a situation such as that in the main proceedings, of the possibility of obtaining a judicial decision, possibly a judgment in default, from the courts in the Member State of the habitual residence of the child concerned, which have jurisdiction under Article 8 of Regulation No 2201/2003. That interpretation does not therefore lead to a denial of justice.

47 Consequently, the answer to Question 3 is that Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that the jurisdiction of the courts seised of an application in matters of parental responsibility may not be regarded as having been ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of that provision solely because the legal representative of the defendant, appointed by those courts of their own motion in view of the impossibility of serving the document instituting proceedings on the defendant, has not pleaded the lack of jurisdiction of those courts.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. An action in which one parent asks the court to remedy the lack of agreement of the other parent to their child travelling outside his Member State of residence and a passport being issued in the child’s name is within the material scope of Council Regulation (EC) No 2201/2003 of 27 November 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, even though the decision in that action will have to be taken into account by the authorities of the Member State of which the child is a national in the administrative procedure for the issue of that passport.

2. Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that the jurisdiction of the courts seised of an application in matters of parental responsibility may not be regarded as having been ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of that provision solely because the legal representative of the defendant, appointed by those courts of their own motion in view of the impossibility of serving the document instituting proceedings on the defendant, has not pleaded the lack of jurisdiction of those courts.

[Signatures]