



Reports of Cases

Case C-499/15

**W
and
V**

v X

(Request for a preliminary ruling
from the Vilniaus miesto apylinkės teismas)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Articles 8 to 15 — Jurisdiction concerning maintenance obligations — Regulation (EC) No 4/2009 — Article 3(d) — Conflicting judgments given in the courts of different Member States — Child habitually resident in the Member State of residence of his mother — The courts of the father’s Member State of residence without jurisdiction to vary a decision that has become final which they adopted earlier concerning the residence of the child, maintenance obligations and contact arrangements)

Summary — Judgment of the Court (First Chamber), 15 February 2017

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — No reference to the European Court of Human Rights for a preliminary ruling*

(Art. 267 TFEU; Rules of Procedure of the Court of Justice, Art. 83)

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, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations — Regulation No 4/2009 — No jurisdiction of the courts of a Member State which made a decision that has become final concerning parental responsibility and maintenance obligations with regard to a minor child to decide on an application for variation of the provisions ordered in that decision — Habitual residence of the child in another Member State — Jurisdiction of the courts of that Member State*

(Council Regulations No 2201/2003, Art. 8 and No 4/2009, Art. 3)

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 — Concept of ‘habitual residence’ of the child — Criteria for assessment — Physical presence of the child in a Member State*

(Council Regulation No 2201/2003, Art. 8)

1. By document lodged on 20 December 2016, W applied, on the basis of Article 83 of the Rules of Procedure of the Court of Justice, for the oral procedure to be reopened and a question to be referred by the Court of Justice to the European Court of Human Rights for a preliminary ruling. Concerning, in the first place, the application for a reference to the European Court of Human Rights, it should be pointed out that the Court has no power under Article 83 of the Rules of Procedure or under any other provision in those rules to make such a reference.

(see paras 32, 33)

2. Article 8 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, and Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, must be interpreted as meaning that, in a case such as that in the main proceedings, the courts of the Member State which made a decision that has become final concerning parental responsibility and maintenance obligations with regard to a minor child no longer have jurisdiction to decide on an application for variation of the provisions ordered in that decision, inasmuch as the habitual residence of the child is in another Member State. It is the courts of the Member State of habitual residence that have jurisdiction to decide on that application.

As is apparent from recital 12 of Regulation No 2201/2003, that regulation was drawn up with the objective of meeting the best interests of the child and, to that end, it favours the criterion of proximity. Article 8 of Regulation No 2201/2003 gives expression to that objective by establishing a general jurisdiction in favour of the courts of the Member State in which the child is habitually resident. According to Article 8(1), the jurisdiction of a court must be established ‘at the time the court is seised’, that is to say, at the time when the document instituting the proceedings is lodged with the court, in accordance with Article 16 of that regulation (see, to that effect, judgment of 1 October 2014, *E.*, C-436/13, EU:C:2014:2246, paragraph 38). Furthermore, as the Advocate General noted at point 45 of his Opinion, referring to paragraph 40 of the judgment of 1 October 2014, *E.* (C-436/13, EU:C:2014:2246), that jurisdiction must be determined and established in each specific case, where a court is seised of proceedings, which implies that it does not continue after proceedings have been brought to a close.

(see paras 51-54, 70, operative part)

3. In its judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraph 46), confirmed by settled case-law, (see, inter alia, judgment of 9 October 2014, *C.*, C-376/14 PPU, EU:C:2014:2268, paragraph 50), the Court held that the meaning and scope of the concept of ‘habitual residence’ must be determined in the light of the best interests of the child and, in particular, of the criterion of proximity. That concept corresponds to the place that reflects some degree of integration of the child in a social and family environment. That place must be established by the national court, taking account of the circumstances of fact specific to each individual case. The conditions and reasons for the child’s stay on the territory of a Member State and the child’s nationality are of particular relevance. In addition to the physical presence of the child in a Member State, which must be taken into consideration, other factors must also make it clear that that presence is not in any way temporary or intermittent (see, to that effect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraphs 47 to 49). Thus, the determination of a child’s habitual residence in a given Member State requires at least that the child has been physically present in that Member State.

(see paras 60, 61)