



Reports of Cases

Joined Cases C-325/18 PPU and C-375/18 PPU

Hampshire County Council

**v
C.E.
and
N.E.**

(Requests for a preliminary ruling from the Court of Appeal, Ireland)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in matters of parental responsibility — International child abduction — Regulation (EC) No 2201/2003 — Article 11 — Application for return — Hague Convention of 25 October 1980 — Application for a declaration of enforceability — Appeal — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy — Time limit for bringing the appeal — Order authorising enforcement — Enforcement prior to service of the order)

Summary — Judgment of the Court (First Chamber), 19 September 2018

1. *Questions referred for a preliminary ruling — Urgent preliminary ruling procedure — Conditions — Separation and removal of a young child from its mother — Steps taken by a public body to have the child adopted*

(Rules of Procedure of the Court of Justice, Art. 107; Council Regulation No 2201/2003)

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 — Recognition and enforcement — Scope — Decision of a court of a Member State directing that a child be returned, made in the absence of an application based on the 1980 Hague Convention — Enforcement of that decision in accordance with the general provisions of Chapter III of the regulation — Lawfulness*

(Council Regulation No 2201/2003, recital 17 and Chapter III)

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 — Scope — Concept of ‘civil matters’ — Independent interpretation*

(Council Regulation No 2201/2003, Art. 1(1))

4. *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 — Scope — Concept of ‘parental responsibility’ — Child made a ward of court — Included*

(Council Regulation No 2201/2003, Arts 1(1)(b) and (2), and 2(7))

5. *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 — Recognition and enforcement — Decision directing that a child be made a ward of court and that it be returned declared enforceable in the requested Member State — Enforcement of that decision prior to service of the declaration of enforceability on the parents concerned — Not permissible — Extension of the period for lodging an appeal against the declaration of enforceability — Precluded*

(Charter of Fundamental Rights of the European Union, Art. 47; Council Regulation No 2201/2003, Art. 33(1) and (5))

6. *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 — Provisional and protective measures — Measures adopted by the court having substantive jurisdiction — Injunction directed at a public body of another Member State, preventing it from commencing or continuing adoption proceedings — Lawfulness*

(Council Regulation No 2201/2003)

1. See the text of the decision.

(see paras 42-44)

2. The general provisions of Chapter III 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, must be interpreted as meaning that, where it is alleged that children have been wrongfully removed, the decision of a court of the Member State in which those children were habitually resident, directing that those children be returned and which is entailed by a decision dealing with parental responsibility, may be declared enforceable in the host Member State in accordance with those general provisions.

It must be noted that recital 17 of Regulation No 2201/2003 highlights the complementary nature of that regulation by stating that it complements the provisions of the 1980 Hague Convention, which nevertheless remains applicable. The relationship between the two instruments in question is clarified in Article 11(1) of Regulation No 2201/2003, according to which the courts of a Member State must apply paragraphs 2 to 8 of that article to the return proceedings provided for by the 1980 Hague Convention. It must be pointed out that those provisions do not require a person, body or authority, where the international abduction of a child is alleged, to rely on the 1980 Hague Convention in applying for that child’s prompt return in the State of the child’s habitual residence. Thus, a holder of parental responsibility may apply for the recognition and enforcement, in accordance with the provisions of Chapter III of Regulation No 2201/2003, of a decision relating to parental authority and the return of children that has been made by a court having jurisdiction under Chapter II, Section 2, of Regulation No 2201/2003, even if that holder of parental responsibility has not submitted an application for return based on the 1980 Hague Convention.

(see paras 48, 50, 51, 53, 62, operative part 1).

3. See the text of the decision.

(see para. 55)

4. 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 of 27 November 2007, *C*, C-435/06, EU:C:2007:714, paragraph 49, and of 26 April 2012, *Health Service Executive*, C-92/12 PPU, EU:C:2012:255, paragraph 59).

It must be noted that the exercise by a court of its wardship jurisdiction involves the exercise of rights in relation to the welfare and education of the children that would ordinarily be exercised by the parents, for the purposes of Article 1(2)(a) of Regulation No 2201/2003, or aspects of guardianship and curatorship, within the meaning of Article 1(2)(b) of that regulation. As the referring court pointed out, the transfer of the right of custody to an administrative authority also falls within the scope of that regulation.

(see paras 57, 58)

5. Article 33(1) of Regulation No 2201/2003, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in a situation such as that at issue in the main proceedings, enforcement of a decision of a court of a Member State which directs that children be made wards of court and that they be returned and which is declared enforceable in the requested Member State, prior to service of the declaration of enforceability of that decision on the parents concerned. Article 33(5) of Regulation No 2201/2003 must be interpreted as meaning that the period for lodging an appeal laid down in that provision may not be extended by the court seised.

It must be noted in that regard that the requirement that the decision authorising enforcement be served has a dual function: on the one hand, it serves to protect the rights of the party against whom enforcement is sought and, on the other, it allows, in terms of evidence, the strict and mandatory time limit for appealing provided for in Article 33 of Regulation 2201/2003 to be calculated precisely (see, by analogy, judgment of 16 February 2006, *Verdoliva*, C-3/05, EU:C:2006:113, paragraph 34).

That requirement of service, with the associated transmission of information about an appeal, ensures that the party against whom enforcement is sought has a right to an effective remedy. Thus, in order to justify the conclusion that it was possible for the party concerned to commence proceedings to challenge a decision authorising enforcement, as provided for in Article 33 of Regulation No 2201/2003, that party must have been aware of the contents of that decision, which presupposes that it was served on that party (see, by analogy, judgment of 14 December 2006, *ASML*, C-283/05, EU:C:2006:787, paragraph 40).

(see paras 69, 70, 82, operative part 2).

6. Regulation No 2201/2003 must be interpreted as not precluding, in a situation such as that at issue in the main proceedings, a court of one Member State from adopting protective measures in the form of an injunction directed at a public body of another Member State, preventing that body from commencing or continuing, before the courts of that other Member State, proceedings for the adoption of children who are residing there.

Furthermore, according to the actual wording of Article 1(3)(b) of Regulation No 2201/2003, the decision on that adoption and the measures preparatory to it do not fall within the scope of the regulation.

(see paras 93, 94, operative part 3).