



Reports of Cases

ORDER OF THE COURT (First Chamber)

10 April 2018*

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Article 99 of the Rules of Procedure of the Court — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Child custody — Regulation (EC) No 2201/2003 — Articles 8, 10 and 13 — Concept of ‘habitual residence’ of a child — Judgment delivered by a court of another Member State concerning the place of residence of a child — Wrongful removal or retention — Jurisdiction in cases of child abduction)

In Case C-85/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Oradea (Court of First Instance, Oradea, Romania), made by decision of 4 October 2017, received at the Court on 8 February 2018, in the proceedings

CV

v

DU,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, C.G. Fernlund, A. Arabadjiev, S. Rodin (Rapporteur) and E. Regan, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the request of the President of the Court of 20 February 2018, pursuant to Article 107 of the Rules of Procedure of the Court, to consider whether it was necessary to deal with this reference for a preliminary ruling under the urgent procedure,

having regard to the decision of the First Chamber of 28 February 2018 to deal with this reference under that procedure,

makes the following

* Language of the case: Romanian.

Order

- 1 This request for a preliminary ruling concerns the interpretation 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 the context of proceedings between CV and DU, the parents of a child, concerning the determination of the place of residence of that child and maintenance allowance for his support.

Legal context

International law

- 3 One objective of the Convention on the Civil Aspects of International Child Abduction, concluded at the Hague on 25 October 1980 ('the Hague Convention of 1980'), as stated in its preamble, is to protect children internationally from the harmful effects of wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence. That convention has been ratified by all the Member States of the European Union.
- 4 According to Article 3 of that convention:

'The removal or the retention of a child is to be considered wrongful where:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in subparagraph (a), may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.'

European Union law

Regulation No 2201/2003

- 5 Recitals 12 and 17 of Regulation No 2201/2003 state:
'(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.

...

(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. ...'

6 Article 1 of that regulation, entitled 'Scope', states:

'(1) This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

- (a) divorce, legal separation or marriage annulment;
- (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;

...

(3) This Regulation shall not apply to:

...

- (e) maintenance obligations;

...'

7 Article 2 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation:

...

(7) the term "parental responsibility" shall mean 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;

(8) the term "holder of parental responsibility" shall mean any person having parental responsibility over a child;

(9) the term "rights of custody" shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

...

(11) the term "wrongful removal or retention" shall mean a child's removal or retention where:

- (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.'

8 Article 8 of that regulation, entitled 'General jurisdiction', provides:

'(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 Articles 9, 10 and 12.'

9 Article 10 of Regulation No 2201/2003, entitled 'Jurisdiction in cases of child abduction', provides:

'In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

(ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

(iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

(iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.'

10 Article 11 of that regulation, entitled 'Return of the child', provides:

'(1) Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of ... 1980 ..., in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

...

(3) A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

...'

- 11 Article 13 of that regulation, entitled 'Jurisdiction based on the child's presence', provides in paragraph 1:

'Where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the courts of the Member State where the child is present shall have jurisdiction.'

Regulation (EC) No 4/2009

- 12 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 (OJ 2009 L 7, p. 1), applies, in accordance with Article 1(1), 'to maintenance obligations arising from a family relationship, parentage, marriage or affinity'.

- 13 Article 3 of that regulation, entitled 'General provisions', is worded as follows:

'In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

...

(d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.'

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

- 14 It is apparent from the order for reference that CV and DU, Romanian nationals, an unmarried couple, lived together in Portugal. They had a child, who was born on 29 October 2010 in that Member State. Their son has Portuguese nationality.
- 15 In July 2015, the parents separated. The mother, DU, left the common domicile. Their child remained living with his father, CV.
- 16 Following that separation, the parents exercised, in accordance with Portuguese law, joint parental responsibility, including, inter alia, the right to decide the place of residence of the child.
- 17 On 11 April 2016, the mother made an application before a Portuguese court for custody of her child.
- 18 On 25 April 2016, the father left Portugal for Romania, taking his son with him, without the consent of the mother.
- 19 By provisional decision of 15 July 2016, the Portuguese court before which the case was brought upheld the mother's application by awarding her custody of her child.
- 20 On 4 April 2017, the mother brought an action before the competent Romanian courts for the return of her child on the basis of the Hague Convention of 1980. The Tribunalul București (District Court, Bucharest, Romania) was thereby called upon to rule on a procedure relating to international child abduction.

- 21 Subsequently, that court, by a civil judgment, ordered the return of the child concerned to Portugal, on the ground that that State had to be regarded as the Member State of habitual residence of that child. That judgment was upheld by a judgment of the Curtea de Apel București (Court of Appeal, Bucharest, Romania), of 16 August 2017, which thereby considered that Romania could not be regarded as the child's State of residence, in the light of the wrongful nature of the removal of that child from Portugal to Romania.
- 22 Irrespective of that procedure, on 21 April 2017, the father brought an action before the Judecătoria Oradea (Court of First Instance, Oradea, Romania), the referring court, for that court to fix the place of residence of the child concerned at his domicile in Romania and for the mother of that child to be ordered to pay a maintenance allowance and the costs.
- 23 In that regard, CV states in particular that, since DU left the common domicile, she has visited their child only infrequently and has contributed to neither the maintenance nor the education of that child. That situation is currently ongoing, since, according to him, DU is in telephone contact with their child only once a month.
- 24 In defence, DU claims that the action should be dismissed and raises, in accordance with Article 132 of the Romanian Civil Code, a plea alleging the referring court's lack of jurisdiction by invoking Article 8 of Regulation No 2201/2003 and the fact that the competent Romanian courts, ruling on a procedure relating to child abduction, held, by the abovementioned judgments, that their child had his legal domicile in Portugal.
- 25 Following the invocation of that plea of lack of jurisdiction, the father requested the referring court to refer a question for a preliminary ruling to the Court relating to the interpretation of the concept of 'habitual residence' of the child, as it is in essence set out in Article 8 of Regulation No 2201/2003.
- 26 The referring court notes that it must examine in the first place the plea of lack of jurisdiction invoked by the mother of the child concerned and that, in order to rule on that plea, it must have recourse to that concept of 'habitual residence'.
- 27 In that regard, that court notes that, although on the date when the dispute in the main proceedings was brought before it the child concerned had his habitual residence with his father, in Oradea in Romania, the competent Romanian courts had, by the judgments referred to in paragraph 21 of the present order, held that the removal of that child from Portugal to Romania was wrongful and that the place of that child's habitual residence was Portugal.
- 28 In those circumstances, the Judecătoria Oradea (Court of First Instance, Oradea) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Is the concept of habitual residence of the child, within the meaning of Article 8(1) of Regulation No 2201/2003, to be interpreted as meaning that such habitual residence corresponds to the place where the child has demonstrated some degree of integration into the social and family environment, irrespective of the fact that a ruling has been made in another Member State, after the child moved with his father to the territory of the State, where the minor has integrated into that social and family environment? If that is the case, should Article 13 of Regulation No 2201/2003, which determines jurisdiction based on the child's presence, be applied?
- (2) Is the fact that the minor has the nationality of the Member State in which he lives with his father, in circumstances where his parents have Romanian nationality only, relevant for the purpose of determining habitual residence?'

The urgent procedure

- 29 By memorandum of 20 February 2018, the President of the Court, in accordance with Article 107(3) of the Rules of Procedure of the Court, requested the Chamber designated for that purpose, namely the First Chamber, to consider whether it was necessary to deal with this reference for a preliminary ruling under the urgent procedure.
- 30 In that regard, it follows from the case-law that the Court recognises the urgency of ruling in cases of child removal in particular where the separation of a child from the parent would be likely to bring about a deterioration of their relationship, or harm that relationship, and to cause irreparable damage (see, to that effect, judgment of 22 December 2010, *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828, paragraph 39).
- 31 It is apparent from the order for reference that the child concerned, who is seven years old, has lived for almost two years with his father in Romania and is separated from his mother who has resided in Portugal for almost two years. The referring court notes in that regard that the competent Romanian courts, ruling on a procedure relating to international child abduction within the meaning of the Hague Convention of 1980, confirmed, by a judgment which has become final, the wrongfulness of the removal of that child from Portugal to Romania. It states also that CV claims before it that DU is only in monthly telephone contact with their child.
- 32 In those circumstances, in light of the fact that the child concerned is at a developmentally sensitive age, the continuation of the current situation could cause serious, and perhaps irreparable, harm to the relationship that that child has with his mother. Moreover, since the social and family integration of the child concerned, according to the findings of the referring court, is already fairly advanced in the Member State of his habitual residence, the continuation of that situation would be likely to further jeopardise his integration into his family and social environment in the event of any return to Portugal (see, to that effect, judgment of 22 December 2010, *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828, paragraph 40).
- 33 In those circumstances, on 28 February 2018 the First Chamber of the Court decided, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, that the present reference for a preliminary ruling should be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

- 34 Under Article 99 of the Rules of Procedure, where a question referred for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 35 It is appropriate to apply that provision in the context of the present reference for a preliminary ruling.
- 36 First of all, it must be noted that the fact that a national court has, formally speaking, worded its request for a preliminary ruling with reference to certain provisions of EU law does not preclude the Court of Justice from providing to the national court all the elements of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions (see, inter alia, judgments of 29 September 2016, *Essent Belgium*, C-492/14, EU:C:2016:732, paragraph 43, and of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 45).

- 37 In that regard, the Court's answer to the questions referred by the referring court must allow that court to rule on the plea of lack of jurisdiction raised by DU before it on the basis of Article 8 of Regulation No 2201/2003, since that plea must, according to that court, be examined prior to the other pleas and the substance.
- 38 In that context, it must be noted, first of all, that the case in the main proceedings concerns a wrongful removal of a child, for the purposes of the first indent of Article 3 of the Hague Convention of 1980 and Article 2(11) of Regulation No 2201/2003.
- 39 It follows from those provisions that the wrongfulness of the removal or retention of a child, defined in terms very similar to those of those provisions, is established where the removal or retention of a child has taken place in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect, under the law of the Member State where the child was habitually resident immediately before the removal or retention (see judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 36).
- 40 In the present case, the child concerned in the main proceedings was removed to Romania by his father without the consent of the mother, in breach of the right of custody jointly granted to the parents in accordance with the law of the Member State in which the child was habitually resident immediately before that removal, namely the Portuguese Republic. It is also not in dispute that the Romanian courts, ruling in accordance with Article 11 of Regulation No 2201/2003 on an application for the adoption of a decision on the basis of the Hague Convention of 1980 to return that child, by a judgment that has become *res judicata*, confirmed the wrongfulness of that removal by ordering the return of that child to Portugal.
- 41 It follows that, in circumstances such as those at issue in the main proceedings, the jurisdiction of a court of a Member State in matters of parental responsibility relating to a child who has been wrongfully removed must be determined not in the light of the rule attributing general jurisdiction provided for in Article 8(1) of Regulation No 2201/2003, set out in the questions referred, which provides for the case of a lawful removal to another Member state (see, to that effect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 42).
- 42 In accordance with Article 8(2) of Regulation No 2201/2003, the rule on the attribution of general jurisdiction provided for in Article 8(1) of that regulation applies subject, inter alia, to the provisions of Article 10 of that regulation, which provides for a special rule in cases of wrongful removal or retention of a child.
- 43 Moreover, it should be noted that the questions referred by the referring court relate only to the interpretation of Regulation No 2201/2003, whereas it is apparent from the order for reference that the main proceedings concern not only parental responsibility, but also maintenance obligations, which are, in accordance with Article 1(3)(e) of that regulation, excluded from the scope of that regulation.
- 44 In accordance with the case-law referred to in paragraph 36 of the present order, it is necessary, therefore, to reformulate the questions referred by referring to Article 10 of Regulation No 2201/2003, relating to jurisdiction in child abduction cases and to Article 3 of Regulation No 4/2009 relating to jurisdiction to rule on maintenance obligations.
- 45 In light of the above considerations, it must be considered that, by its questions, which should be examined together, the referring court asks, in essence, whether Article 10 of Regulation No 2201/2003 and Article 3 of Regulation No 4/2009 must be interpreted as meaning that the courts of the Member State to which a child has been wrongfully removed by one of his parents have jurisdiction to rule on an application brought by that parent concerning custody and the maintenance obligations in relation to that child where, following that removal, the child has demonstrated some degree of social and family integration in that Member State, and both his parents have, moreover,

nationality of that State, although there exists however a provisional judicial decision delivered by the courts of the Member State in which the child resided before that removal, by which custody of that child was awarded to the other parent and the domicile of that child had been fixed at the address of that other parent, in the State where the child was initially habitually resident, and he also has the nationality of that State.

- 46 In cases of wrongful removal of children, Article 10 of Regulation No 2201/2003 allocates, as a general rule, jurisdiction in matters of parental responsibility to the courts of the Member State in which the child was habitually resident immediately before his removal. That jurisdiction is, in principle, retained and is transferred only if the child has acquired a habitual residence in another Member State and, additionally, one of the alternative conditions stated in Article 10 is also satisfied (judgment of 1 July 2010, *Povse*, C-211/10 PPU, EU:C:2010:400, paragraph 41).
- 47 In the main proceedings, it is not disputed that the child concerned was habitually resident in Portugal immediately before his wrongful removal to Romania.
- 48 As regards the effect of a provisional judicial decision awarding custody of a child, such as that delivered by the Portuguese courts in the main proceedings, by which the domicile of the child concerned was fixed at the mother's domicile in Portugal, it should be noted that Article 10 of Regulation No 2201/2003 provides specifically for the situation in which a child acquires a new habitual residence following a wrongful removal or retention (judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 55). As has already been noted in paragraph 39 of the present order, the wrongfulness of the removal or retention is in particular constituted where there has been a breach of a custody right resulting from a judicial decision.
- 49 Consequently, the existence of such a provisional judgment cannot be decisive for establishing the 'habitual residence' of the child concerned, within the meaning of Regulation No 2201/2003, since that concept of 'habitual residence' reflects essentially a question of fact (see, to that effect, judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 54).
- 50 Also, even assuming that the child concerned acquired, in the main proceedings, a new habitual residence in Romania, for the purposes of that regulation, it should be pointed out that, as was noted in paragraph 46 of the present order, that court can assume jurisdiction, in accordance with Article 10 of that regulation, instead of the courts of the Member State in which that child was habitually resident immediately before his removal, only if one of the alternative conditions set out in Article 10(a) and (b) of that regulation is also satisfied.
- 51 In that regard, the Court has already had occasion to point out that Regulation No 2201/2003 seeks to deter child abductions between Member States and that the wrongful removal of a child, such as that at issue in the main proceedings, should not, in principle, have the effect of transferring jurisdiction from the courts of the Member State in which the child was habitually resident immediately before his removal to those of the Member State to which the child was taken, even if, following the abduction, the child has acquired a habitual residence in the latter Member State. Accordingly, it considered that the conditions set out in Article 10(a) and (b) of Regulation No 2201/2003 must be interpreted strictly (judgment of 1 July 2010, *Povse*, C-211/10 PPU, EU:C:2010:400, paragraphs 43 to 45).
- 52 In the main proceedings, it does not in any way follow from the file submitted to the Court that one of those conditions has been satisfied. First, in the light of the applications brought by the child's mother before the Portuguese and Romanian courts, there can be no question of consent to the removal or retention of the child by the person who has custody for the purposes of Article 10(a) of Regulation No 2201/2003. Secondly, in view of the existence of an application for return, brought less than a year after the removal of the child concerned, which was upheld by the Romanian courts and although it

does not appear that a custody decision not involving the return of the child was taken by the Portuguese courts, none of the conditions referred to in Article 10(b) of that regulation can be held to have been satisfied.

- 53 Consequently, it must be held that, in a situation such as that in the main proceedings, the courts of the Member State in which the child concerned was habitually resident immediately before his wrongful removal have, in accordance with Article 10 of Regulation No 2201/2003, jurisdiction to rule on an application relating to the custody of that child.
- 54 As regards the referring court's jurisdiction to rule on the application for a maintenance allowance, it should be noted that Article 3(d) of Regulation No 4/2009 provides that jurisdiction in matters relating to maintenance obligations in Member States may lie with the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties. In accordance with that provision, the court which has jurisdiction under Article 10 of Regulation No 2201/2003 will, in principle, also have jurisdiction to hear an application for maintenance which is ancillary to the parental responsibility proceedings pending before it (see, to that effect, judgment of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraph 35, and order of 16 January 2018, *PM*, C-604/17, not published, EU:C:2018:10, paragraph 32).
- 55 Therefore, to the extent that, as is apparent from paragraph 53 of the present order, the Romanian courts do not have jurisdiction, in accordance with Article 10 of Regulation No 2201/2003, to rule on an application relating to parental responsibility in relation to the child at issue in the main proceedings, they also do not have jurisdiction to rule on the application relating to the maintenance allowance on the basis of Article 3(d) of Regulation No 4/2009. Moreover, it does not follow from the information in the file before the Court that those courts could nevertheless have jurisdiction to rule on the matter of maintenance obligations on another basis under Regulation No 4/2009.
- 56 Consequently, in the light of the information in the case file before the Court, the referring court does not have jurisdiction over either the application relating to custody, or the maintenance allowance in relation to the child of CV and DU, since that jurisdiction is reserved to the Portuguese courts.
- 57 In view of all the foregoing, the answer to the questions referred is that Article 10 of Regulation No 2201/2003 and Article 3 of Regulation No 4/2009 must be interpreted as meaning that, in a case such as that at issue in the main proceedings, in which a child who was habitually resident in a Member State was wrongfully removed by one of the parents to another Member State, the courts of that other Member State do not have jurisdiction to rule on an application relating to custody or the determination of a maintenance allowance with respect to that child, in the absence of any indication that the other parent consented to his removal or did not bring an application for the return of that child.

Costs

- 58 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 (First Chamber) hereby rules:

Article 10 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 at issue in the main proceedings, in which a child who was habitually resident in a Member State was wrongfully removed by one of the parents to another Member State, the courts of that other Member State do not have jurisdiction to rule on an application relating to custody or the determination of a maintenance allowance with respect to that child, in the absence of any indication that the other parent consented to his removal or did not bring an application for the return of that child.

[Signatures]