



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

2 August 2021 *

(Reference for a preliminary ruling – Area of freedom, security and justice – Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility – Regulation (EC) No 2201/2003 – Scope – Article 2(11) – Definition of ‘wrongful removal or retention of a child’ – Hague Convention of 25 October 1980 – Application for return of a child of a young age whose parents have joint custody – Third-country nationals – Transfer of the child and his mother to the Member State responsible for examining an application for international protection under Regulation (EU) No 604/2013 (Dublin III))

In Case C-262/21 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 23 April 2021, received at the Court on 23 April 2021, in the proceedings

A

v

B,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 28 June 2021,

after considering the observations submitted on behalf of:

- A, by J. Kuusivaara, asianajaja,
- B, by E. Wehka-aho and A. Saarikoski, luvan saaneet oikeudenkäyntiavustajat,

* Language of the case: Finnish.

- the Finnish Government, by H. Leppo, acting as Agent,
 - the Swedish Government, by O. Simonsson, J. Lundberg, C. Meyer-Seitz, A.M. Runeskjöld, M. Salborn Hodgson, H. Shev, H. Eklinder and R. Shahsavan Eriksson, acting as Agents,
 - the European Commission, by M. Huttunen, W. Wils and A. Azema, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 14 July 2021,
- gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(11) and Article 11(4) 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) ('the Brussels II bis Regulation'), point (b) of the first paragraph of Article 13, and Article 20 of the Convention on the Civil Aspects of International Child Abduction, concluded at the Hague on 25 October 1980 ('the Hague Convention'), and Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between A and B, third-country nationals, respectively the mother and father of a minor child, relating to a request made by the father under the Hague Convention in order to obtain the return of the child to Sweden, following the transfer of the child and his mother to Finland pursuant to a decision adopted in application of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31) ('the Dublin III Regulation').

Legal context

International law

- 3 Article 1 of the Hague Convention provides:

'The objects of the present Convention are:

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.'

4 The first paragraph of Article 13 of that convention states:

‘Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.’

5 Article 20 of that convention provides:

‘The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.’

European Union law

Brussels II bis Regulation

6 Recitals 5, 17 and 33 of the Brussels II bis Regulation 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.

...

(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] would continue to apply as complemented by the provisions of this Regulation, in particular Article 11 ...

...

(33) This Regulation recognises the fundamental rights and observes the principles of the [Charter]. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the [Charter]’.

7 Article 1 of that regulation, which is entitled ‘Scope’, provides, in paragraphs 1 and 2 thereof:

‘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.'

8 Under Article 2 of that regulation:

'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;

...

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.'

9 Under Article 11(1) and (4) of that regulation:

'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], 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.

...

4. A court cannot refuse to return a child on the basis of Article 13b of the [Hague Convention] if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.’

Dublin III Regulation

10 According to Article 6(1) of the Dublin III Regulation:

‘The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.’

11 Pursuant to Article 12(3) of the Dublin III Regulation:

‘Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

...’

12 Under Article 29(1) and (3) of that regulation:

‘1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

...

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.’

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

13 In May 2019, A and B, third-country nationals who had resided in Finland since 2016, moved to Sweden. On 5 September 2019, a child was born from the union. The child was then habitually resident in Sweden and his two parents had joint custody.

14 On the basis of the residence document issued to the father as an employed person, the mother was issued with residence documents on the ground of family ties, for Finland for the period from 28 December 2017 to 27 December 2021 and for Sweden for the period from 11 March 2019 to 16 September 2020.

- 15 By decision of the Swedish authorities of 11 November 2019, the child was taken into care by the authorities and, together with his mother, was placed in a hostel in Sweden until their transfer to Finland on 24 November 2020. That decision was confirmed by judgment of an administrative court of 17 January 2020, which relied on domestic violence against the mother by the father and witnessed by the child, the real risk to the development and health of the child, and the risk that the child will be taken to the parents' country of origin by the father without the mother's consent.
- 16 According to the additional information provided by the Swedish Government in response to the Court's request for information, the father, when the child was taken into care, was allowed access only to photos and videos of the child. Visits were subsequently organised in the presence of a social worker, but were limited to very brief contact due to the young age of the child and because the father was not considered to be a safe person for the child.
- 17 On 21 November 2019, the father applied on behalf of the child for a residence document in Sweden on the ground of the father-child family tie. On 4 December 2019, the mother also applied on behalf of the child for a residence document in Sweden.
- 18 On 7 August 2020, the mother submitted an application for asylum in Sweden for herself and for the child, relying on domestic violence against her by the father and, in the event of return to her country of origin, threats of 'honour' violence made by the father's family.
- 19 On 27 August 2020, the Republic of Finland informed the Kingdom of Sweden that it was responsible for examining the applications for asylum of the mother and child, in application of Article 12(3) of the Dublin III Regulation, on the ground that the expiry of the residence document issued by the Republic of Finland (27 December 2021) was later than that of the residence document issued by the Kingdom of Sweden (16 September 2020).
- 20 By decision of 27 October 2020, the Swedish authorities decided to take no further action on the application for a residence document submitted by the father on behalf of the child, rejected the applications for asylum of the mother and child as inadmissible and ordered the transfer of the mother and the child to Finland. It is apparent from that decision that the best interests of the child had been taken into account at the time of its adoption in accordance with Article 6(1) of the Dublin III Regulation. In that regard, it was considered that the father posed a threat to the child and that, in view of the fact that the child had no contact with his father, the separation of the father and the child for a period of time was not contrary to the best interests of the child. In addition, since the father has a residence document for Finland, the transfer of the child to that State did not preclude the exercise of access rights by the father.
- 21 On 24 November 2020, the mother voluntarily complied with the decision of the Swedish authorities to transfer herself and the child to Finland in application of Article 29(1) of the Dublin III Regulation.
- 22 On 7 December 2020, the father lodged an appeal against the decision of the Swedish authorities to take no further action on his application for a residence document for the child and to transfer the child to Finland.
- 23 By judgment of 21 December 2020, the Migrationsdomstolen i Stockholm (Migration Court, Stockholm, Sweden) annulled that decision and referred the case back to the Swedish immigration authority because the child's father had not been heard during the procedure.

- 24 By decision of 29 December 2020, the Swedish immigration authority decided it would take no further action in the cases since the child had left for Finland. On 19 January 2021, the father lodged an appeal against that decision before the Migrationsdomstolen i Stockholm (Migration Court, Stockholm), which was dismissed by judgment of 6 April 2021.
- 25 On 5 January 2021, the father again requested to the Swedish immigration authority to issue a residence document for the child on the ground of the family tie. That request for a Swedish residence permit is pending.
- 26 On 11 January 2021, the mother applied to Finland for asylum for herself and for the child. On 26 March 2021, the Finnish authorities withdrew the residence document which the mother had previously been granted in Finland and which was due to expire, in principle, on 27 December 2021. The application for asylum in Finland is pending.
- 27 With regard to rights of custody, in November 2020, shortly before the transfer of the mother and the child to Finland, the Västmanlands tingsrätt (District Court, Västmanland, Sweden) maintained the joint custody of the child's parents. The child's mother disputed that court's jurisdiction to deal with the case following the child's transfer to Finland. On 29 April 2021, that court granted the parents' divorce, awarded sole custody of the child to the mother and rejected the request for access rights made by the child's father. By judgment of the Svea hovrätt (Svea Court of Appeal, Stockholm, Sweden) of 23 and 24 June 2021, the father was denied the possibility to appeal against the decision of the District Court.
- 28 On 21 December 2020, the father brought an action before the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland) seeking an order for the prompt return of the child to Sweden. In a statement of 26 January 2021 communicated to that court by the Swedish authorities, the authorities stated that neither the child nor the mother had a currently valid residence document in Sweden, or the right to enter Sweden or to remain there.
- 29 By a decision of 25 February 2021, the Helsingin hovioikeus (Court of Appeal, Helsinki) dismissed the application, observing, in particular, that it could not be considered that the mother had wrongfully removed the child from his country of residence. The father brought an appeal before the referring court seeking the annulment of that decision.
- 30 In those circumstances, the Korkein oikeus (Supreme Court, Finland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 2(11) of [the Brussels II bis Regulation], relating to the wrongful removal of a child, be interpreted as meaning that a situation in which one of the parents, without the other parent's consent, removes the child from his or her place of residence to another Member State, which is the Member State responsible under a transfer decision taken by an authority in application of [the Dublin III Regulation], must be classified as wrongful removal?
- (2) If the answer to the first question is in the negative, must Article 2(11) of the Brussels II bis Regulation, relating to wrongful retention, be interpreted as meaning that a situation in which a court of the child's State of residence has annulled the decision taken by an authority to transfer examination of the file, but in which the child whose return is ordered no longer has a currently valid residence document in his or her State of residence, or the right to enter or to remain in the State in question, must be classified as wrongful retention?

- (3) If, in the light of the answer to the first or the second question, the Brussels II bis Regulation must be interpreted as meaning that there is a wrongful removal or retention of the child, and that he or she should therefore be returned to his or her State of residence, must Article 13(b) of the [Hague Convention] be interpreted as precluding the child's return, either
- (i) on the ground that there is grave risk, within the meaning of that provision, that the return of an unaccompanied infant whose mother has personally taken care of him or her would expose that child to physical or psychological harm or otherwise place the child in an intolerable situation; or
 - (ii) on the ground that the child, in his or her State of residence, would be taken into care and placed in a hostel either alone or with his or her mother, which would indicate that there is a grave risk, within the meaning of that provision, that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; or
 - (iii) on the ground that, without a currently valid residence document, the child would be placed in an intolerable situation within the meaning of that provision?
- (4) If, in the light of the answer to the third question, it is possible to interpret the grounds of refusal in Article 13(b) of the [Hague Convention] as meaning that there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, must Article 11(4) of the Brussels II bis Regulation, in conjunction with the concept of the "child's best interests", referred to in Article 24 of the [Charter] and in that regulation, be interpreted as meaning that, in a situation in which neither the child nor the mother has a currently valid residence document in the child's State of residence, and in which therefore have neither the right to enter nor the right to remain in that State, the child's State of residence must make adequate arrangements to secure that the child and his or her mother can lawfully remain in the Member State in question? If the child's State of residence has such an obligation, must the principle of mutual trust between Member States be interpreted as meaning that the State which returns the child may, in accordance with that principle, presume that the child's State of residence will fulfil those obligations, or do the child's interests make it necessary to obtain from the authorities of the State of residence details of the specific measures that have been or will be taken for the child's protection, so that the Member State which surrenders the child may assess, in particular, the adequacy of those measures in the light of the child's interests?
- (5) If the child's State of residence does not have the obligation, referred to above in the fourth question, to take adequate measures, is it necessary, in the light of Article 24 of the [Charter], to interpret Article 20 of the [Hague Convention], in the situations referred to in the third question, points (i) to (iii), as meaning that that provision precludes the return of the child because the return of the child might be considered to be contrary, within the meaning of that provision, to the fundamental principles relating to the protection of human rights and fundamental freedoms?

Procedure before the Court

- 31 On 21 May 2021, in response to the Court's request for information, the referring court stated, in particular, that the father's action seeking an order for the return of the child in application of the Dublin III Regulation had been dismissed as inadmissible.

- 32 In those circumstances, the referring court reformulated the wording of the second question referred as follows:

‘If the answer to the first question is in the negative, must Article 2(11) [of the Brussels II bis Regulation], relating to wrongful retention, be interpreted as meaning that a situation in which a court of the child’s State of residence has annulled the decision taken by an authority to transfer examination of the file, and to take no further action since the mother and child have left the State of residence, but in which the child whose return is ordered no longer has a currently valid residence document in his or her State of residence, or the right to enter or to remain in the State in question, must be classified as wrongful retention?’

- 33 By document of 31 May 2021, the Swedish Government responded to written questions asked by the Court and produced the documents required.

The urgent preliminary ruling procedure

- 34 The referring court requested that the reference for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court’s Rules of Procedure.
- 35 In support of its application, it observed that the Court’s answers to the questions referred for a preliminary ruling will be decisive for the outcome of the dispute, in so far as they will result in the Court’s decision on whether or not to order the return of the child to Sweden. The referring court relied, in particular, on recital 17 of the Brussels II bis Regulation which provides that, in cases of wrongful removal or retention of a child, the return of the child should be obtained without delay and noted that, in view of the child’s age, the length of his stay in Finland and the fact that prolongation of the proceedings could be harmful to the development of a father-child relationship, the application of the urgent procedure was absolutely imperative.
- 36 In that regard, it should be noted, in the first place, that this request for a preliminary ruling concerns the interpretation of the Brussels II bis Regulation which was adopted on the basis, in particular, of Article 61(c) TEC, now Article 67 TFEU, which appears in Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. It can therefore be dealt with under the urgent preliminary ruling procedure.
- 37 In the second place, the action at issue in the main proceedings was brought by a father separated for several months from his child who is less than two years old, with a view to obtaining the prompt return of the child to Sweden in application of the Hague Convention.
- 38 In those circumstances, the First Chamber of the Court decided, on 6 May 2021, on the basis of the Judge-Rapporteur’s proposal and after hearing the Advocate General, to grant the referring court’s request that the reference for a preliminary ruling be dealt with under the urgent procedure.

Questions referred for a preliminary ruling

The first and second questions

- 39 By its first and second questions, the referring court asks, in essence, whether Article 2(11) of the Brussels II bis Regulation must be interpreted as meaning that a situation in which one of the parents, without the other parent's consent, removes the child from his or her Member State of habitual residence to another Member State pursuant to a decision to transfer taken by the first Member State in application of the Dublin III Regulation, then remains in the second Member State after the decision to transfer has been annulled without the authorities of the first Member State deciding to take back the persons transferred or authorise their residence, can be considered wrongful removal or retention within the meaning of that provision.
- 40 In the first place, as regards the material scope of the Brussels II bis Regulation, 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 thereof (judgment of 21 October 2015, *Gogova*, C-215/15, EU:C:2015:710, paragraph 26 and the case-law cited).
- 41 In that regard, the concept of 'parental responsibility' is given a broad definition in Article 2(7) of the Brussels II bis Regulation, 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. 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' (judgment of 21 October 2015, *Gogova*, C-215/15, EU:C:2015:710, paragraph 27 and the case-law cited).
- 42 To determine whether an application falls within the scope of the Brussels II bis Regulation, the focus must be on the object of the application (judgment of 21 October 2015, *Gogova*, C-215/15, EU:C:2015:710, paragraph 28 and the case-law cited).
- 43 It is apparent from the order for reference that the father of the child brought his action before the referring court with a view to obtaining the prompt return of the child to Sweden in application of the Hague Convention. Accordingly, given that the object of an application such as that at issue in the main proceedings concerns parental responsibility, the Brussels II bis Regulation is applicable.
- 44 In the second place, with regard to the classification as 'wrongful removal or retention', it is apparent from the wording of Article 2(11) of the Brussels II bis Regulation that the removal or the retention of a child is to be considered wrongful where 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, 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.
- 45 As noted by the Advocate General in point 34 of his Opinion, it is apparent from that provision that classification as 'wrongful removal or retention' requires the fulfilment of two criteria, namely, on the one hand, that the removal of the child is in breach of rights of custody under the

law of the Member State where the child was habitually resident, which requires the determination of the place where the child was habitually resident before his or her removal (see, to that effect, judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 53) and, on the other, that the rights of custody were actually exercised or would have been so exercised but for the removal or retention.

- 46 This is further supported by the objective pursued by the Brussels II bis Regulation. Although that regulation aims, as is apparent from its preamble, to create a judicial area based on the principle of mutual recognition of judicial decisions by setting out rules on jurisdiction, recognition and enforcement of judgments in matters of parental responsibility, whereas the object of the Hague Convention is, according to Article 1(a) thereof, to secure the prompt return of children wrongfully removed to or retained in any Contracting State, there is a close link between the two instruments which, in essence, have the common objective of deterring child abductions between States and, in cases of abduction, obtaining the child's prompt return to the State of the child's habitual residence (judgment of 19 September 2018, *C.E. and N.E.*, C-325/18 PPU and C-375/18 PPU, EU:C:2018:739, paragraph 47 and the case-law cited).
- 47 It is an objective of the return procedure envisaged by the Hague Convention and the Brussels II bis Regulation that one of the parents cannot strengthen his or her position on the issue of custody with respect to the child by evading, by wrongful conduct, the jurisdiction of the courts that are as a matter of principle designated, according to the rules laid down in particular by that regulation, to give a ruling on parental responsibility with respect to that child (see, to that effect, judgments of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 49; of 9 October 2014, *C*, C-376/14 PPU, EU:C:2014:2268, paragraph 67; and of 8 June 2017, *OL*, C-111/17, EU:C:2017:436, paragraph 63 and the case-law cited).
- 48 The fact, for a parent who has rights of custody of his or her child, to move with the child to a Member State other than the Member State where the child was habitually resident, pursuant to a transfer decision taken by the competent national authorities in respect of that parent and the child in application of the Dublin III Regulation cannot be considered wrongful conduct, within the meaning of the case-law referred to in the previous paragraph, likely to constitute wrongful removal within the meaning of Article 2(11) of the Brussels II bis Regulation, without it being necessary to verify, in advance, whether the conditions set out in paragraph 45 above, in particular the condition relating to whether the removal of the child is in breach of rights of custody that were actually exercised, are met.
- 49 Compliance with a transfer decision that was binding on the parent and child in question, in so far as, at the time of transfer, it was enforceable, having not, at that time, been either suspended or annulled, must be considered to be merely a legal consequence of that decision which cannot be blamed on the parent in question.
- 50 Likewise, it cannot be considered that retention in the Member State responsible for examining the application for international protection constitutes wrongful conduct, even after the annulment of the decision to transfer, where no decision to take back the parent and the child in question has been made by the authorities of the Member State which carried out the transfer, in application of Article 29(3) of the Dublin III Regulation after the date of transfer and where they are not authorised to reside in that Member State.

- 51 In such a situation, the child's retention appears to be the mere consequence of the child's administrative status, as determined by enforceable decisions taken by the Member State where the child was habitually resident.
- 52 Lastly, it should be added that an interpretation according to which an applicant for international protection, such as the mother in the dispute in the main proceedings, should refrain from complying with a transfer decision on the ground that her conduct could be considered wrongful under the Brussels II bis Regulation would undermine the principle of legal certainty and the attainment of the objectives pursued by the Dublin III Regulation.
- 53 Consequently, the answer to the first and second questions referred is that Article 2(11) of the Brussels II bis Regulation must be interpreted as meaning that a situation in which one of the parents, without the other parent's consent, removes the child from his or her Member State of habitual residence to another Member State pursuant to a decision to transfer taken by the first Member State in application of the Dublin III Regulation, then remains in the second Member State after the decision to transfer has been annulled without the authorities of the first Member State deciding to take back the persons transferred or authorise their residence, cannot be considered wrongful removal or retention within the meaning of that provision.

The third to fifth questions

- 54 In the light of the answer to the first and second questions, there is no need to reply to the third, fourth and fifth questions.

Costs

- 55 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 2(11) 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 a situation in which one of the parents, without the other parent's consent, removes the child from his or her Member State of habitual residence to another Member State pursuant to a decision to transfer taken by the first Member State in application of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, then remains in the second Member State after the decision to transfer has been annulled without the authorities of the first Member State deciding to take back the persons transferred or authorise their residence, cannot be considered wrongful removal or retention within the meaning of that provision.

[Signatures]