



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

13 July 2023\*

(Reference for a preliminary ruling – Jurisdiction in matters of parental responsibility – Regulation (EC) No 2201/2003 – Articles 10 and 15 – Transfer to a court of another Member State better placed to hear the case – Conditions – Court of the Member State to which the child has been wrongfully removed – The 1980 Hague Convention – Best interests of the child)

In Case C-87/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht Korneuburg (Regional Court, Korneuburg, Austria), made by decision of 4 January 2022, received at the Court on 9 February 2022, in the proceedings

**TT**

v

**AK,**

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fourth Chamber, L.S. Rossi (Rapporteur), J.-C. Bonichot and O. Spineanu-Matei, Judges,

Advocate General: P. Pikamäe,

Registrar: D. Dittert, Head of Unit

having regard to the written procedure and further to the hearing on 12 January 2023,

after considering the observations submitted on behalf of:

- TT, by Z. Gáliková, M. Hrabovská, advokátky, P. Hajek and P. Rosenich, Rechtsanwälte,
- AK, by S. Lenzhofer and L. Stelzer Páleníková, Rechtsanwälte,
- the Slovak Government, by S. Ondrášiková and B. Ricziová, acting as Agents,
- the European Commission, by H. Leupold and W. Wils, acting as Agents,

\* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 23 March 2023,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 15 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 TT, a Slovak national residing in Austria, and AK, a Slovak national, concerning the care of their two children residing in Slovakia with AK.

### **Legal context**

#### ***The 1980 Hague Convention***

- 3 Article 6 of the Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980, ('the 1980 Hague Convention') provides:

'A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.'

- 4 The first paragraph and point (f) of the third paragraph of Article 8 of that convention provide:

'Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.'

...

The application may be accompanied or supplemented by -

...

(f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State'.

- 5 Article 16 of that convention provides:

'After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.'

**Regulation No 2201/2003**

6 Recitals 12, 13, 17 and 33 of Regulation No 2201/2003 are worded as follows:

‘(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.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.

...

(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 1980 Hague Convention] would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

...

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

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;

...

(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 Regulation No 2201/2003 includes a Chapter II, entitled ‘Jurisdiction’, which contains, in Section 2, which is headed ‘Parental responsibility’, Articles 8 to 15 of that regulation.

9 Article 8 of that regulation, headed ‘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.’

10 Article 10 of that regulation, headed ‘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.'

11 Article 11 of Regulation No 2201/2003, entitled 'Return of the child', provides in paragraphs (1) to (3):

'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 1980 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.

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

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.'

12 Article 12 of the regulation, entitled, 'Prorogation of jurisdiction', grants, under certain conditions, jurisdiction on any matter relating to parental responsibility to the court of the Member State which exercised jurisdiction to rule on the application for divorce, legal separation, or the annulment of the marriage of the spouses.

13 Article 15 of the regulation, entitled 'Transfer to a court better placed to hear the case', provides:

'1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

- (a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
- (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

- (a) upon application from a party; or

- (b) of the court's own motion; or
- (c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

- (a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or
- (b) is the former habitual residence of the child; or
- (c) is the place of the child's nationality; or
- (d) is the habitual residence of a holder of parental responsibility; or
- (e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where, due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.'

14 Article 20 of the regulation, headed 'Provisional, including protective, measures', provides:

'1. In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.'

15 Article 60 of the same regulation provides:

‘In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

...

(e) the [1980] Hague Convention .’

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

16 TT, the applicant in the main proceedings, and AK, the respondent in the main proceedings, both of whom are Slovak nationals, are the parents of V and M, born outside marriage in Slovakia in 2012. Under Slovak law, custody of the children is joint.

17 In 2014, the family moved to Austria where the children attended a crèche and then school. In 2017, while continuing to reside in Austria, the children went to school in Slovakia, travelling on a daily basis between their home in Austria and their new school. The children communicate with their parents and grandparents in Slovak and know only a few words of German.

18 TT and AK separated at the beginning of 2020. In July 2020, AK brought the children to live with her in Slovakia, without TT’s consent.

19 Pursuant to the 1980 Hague Convention, TT lodged a request, in accordance with the first paragraph and point (f) of the third paragraph of Article 8 of that convention, for the return of the children which was brought before the Okresný súd Bratislava I (District Court, Bratislava I, Slovakia).

20 In parallel, TT lodged an application before the Bezirksgericht Bruck an der Leitha (District Court, Bruck an der Leitha, Austria) seeking principally to be granted sole custody of the two children. He submitted, in essence, that, having wrongfully removed the children from Austria to Slovakia, AK had undermined their well-being and prevented them from maintaining their relationship with their father.

21 AK opposed that application, submitting that the court seised lacked international jurisdiction on the ground that the children’s habitual residence had always been situated in Slovakia and that they were not socially integrated in the place where the family house was in Austria.

22 By a decision of 4 January 2021, that court refused TT’s application by upholding the plea of a lack of international jurisdiction raised by AK.

23 TT brought an appeal before the Landesgericht Korneuburg (Regional Court, Korneuburg, Austria), which, by a decision of 23 February 2021, revised the first-instance court’s decision and rejected the plea of a lack of international jurisdiction raised by the mother. Following an extraordinary appeal on a point of law, that decision was confirmed by order of the Oberster Gerichtshof (Supreme Court, Austria) of 23 June 2021.

24 On 23 September 2021, AK seised the Bezirksgericht Bruck an der Leitha (District Court, Bruck an der Leitha) for it to request a court in the Slovak Republic to assume jurisdiction on the matter of custody of the children, in accordance with the provisions of Article 15(1)(b), (2)(a)

- and (5) of Regulation No 2201/2003. In that regard, AK submitted that, first, in addition to the return proceedings instituted by TT pursuant to the 1980 Hague Convention before the Okresný súd Bratislava I (District Court, Bratislava I) several sets of proceedings lodged by both parents were pending before the Okresný súd Bratislava V (District Court, Bratislava V, Slovakia) and, second, since those courts had already taken extensive evidence, the courts of the Slovak Republic were better placed to rule on the matter of parental responsibility for the two children.
- 25 TT opposed that application, contending in essence that jurisdiction provided for in Article 15 of Regulation No 2201/2003 cannot be transferred where the courts of the other Member State, which have been called upon to accept jurisdiction, are seised of an application for return pursuant to the 1980 Hague Convention, to which Article 11 of the regulation refers.
- 26 The Bezirksgericht Bruck an der Leitha (District Court, Bruck an der Leitha) granted AK's application. That court found that the Okresný súd Bratislava V (District Court, Bratislava V), which had already made several decisions regarding TT's right of access to the children, was better placed to rule on parental responsibility and on rights of access to the two children, who had resided with their mother in Slovakia since July 2020 and were not socially integrated in Austria. Furthermore, conduct of the proceedings before an Austrian court would be made difficult by the need to provide for a court-certified interpreter for all interviews and checks made in the investigations by the Austrian child and youth welfare bodies and for the appointed child psychology experts.
- 27 TT lodged an appeal against that judgment before the Landesgericht Korneuburg (Regional Court, Korneuburg).
- 28 The referring court observes, in the first place, that the question as to the relationship between Article 15(1) and Article 10 of Regulation No 2201/2003 has not yet been ruled on by the Court. In that regard, it wonders whether the court of a Member State, which has jurisdiction to rule on the merits of rights of custody with regard to a child, is permitted to transfer that jurisdiction, pursuant to Article 15(1)(b) of the regulation, to a court of the Member State in which that child has, in the meantime, settled his or her habitual residence following a wrongful removal. In the second place, if the Court answers that question in the affirmative, the referring court wonders whether the conditions listed in Article 15(1) of Regulation No 2201/2003 are exhaustive or whether other circumstances, taking account of the specific nature of the wrongful removal, may be taken into consideration.
- 29 In those circumstances, the Landesgericht Korneuburg (Regional Court, Korneuburg) stayed proceedings and referred the following questions to the Court of Justice for a preliminary ruling:
- '(1) Must Article 15 of [Regulation No 2201/2003] be interpreted as meaning that [a court] of a Member State having jurisdiction as to the substance of the matter, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, may request such a court to assume jurisdiction even in the case where that other Member State has become the place of habitual residence of the child following wrongful removal?
- (2) Must Article 15 of [Regulation No 2201/2003] be interpreted as meaning that the criteria for the transfer of jurisdiction that are set out in that article are regulated exhaustively, without the need to consider further criteria in the light of proceedings initiated under Article 8 [first paragraph and third paragraph, point (f) of the 1980 Hague Convention]?'



## Consideration of the questions referred

### *The first question*

- 30 By its first question, the referring court asks, in essence, whether Article 15 of Regulation No 2201/2003 must be interpreted as meaning that the court of a Member State, which has jurisdiction as to the substance of a case on the matter of parental responsibility under Article 10 of that regulation, may request the transfer of that case, provided for by Article 15(1)(b) of that regulation, to a court of the Member State to which that child has been wrongfully removed by one of his or her parents.
- 31 As a preliminary observation, it should be noted that that question rests on the twofold premiss that, first, since there was no consent on the part of TT, the removal of the children by AK from Austria to Slovakia constitutes a ‘wrongful removal’, within the meaning of Article 2(11)(a) of Regulation No 2201/2003 and that, second, the referring court, in its capacity as the court of the Member State in the territory of which the children had their habitual residence immediately before their wrongful removal, has jurisdiction as to the substance of the matter in relation to parental responsibility in respect of those children, pursuant to Article 10 of that regulation.
- 32 That observation having been made, it should be recalled that Regulation No 2201/2003 lays down, in Section 2 of Chapter II, the rules on jurisdiction in matters of parental responsibility, in particular concerning rights of custody.
- 33 As is apparent from recital 12 of that regulation, those rules on jurisdiction were drawn up with the objective of meeting the best interests of the child and, to that end, they favour the criterion of proximity. Article 8(1) of the same regulation reflects that objective by establishing a general rule of jurisdiction in favour of the courts of the Member State in which the child is habitually resident at the time the court is seised. Because of their geographical proximity, those courts are generally the best placed to assess the measures to be taken in the interests of the child (see, to that effect, judgment of 27 April 2023, *CM (Right of access to a child who has moved)*, C-372/22, EU:C:2023:364, paragraphs 21 and 22 and the case-law cited).
- 34 However, in accordance with Article 8(2) of Regulation No 2201/2003. the rule of jurisdiction laid down in Article 8(1) applies subject, inter alia, to Article 10 of that regulation.
- 35 Pursuant to that Article 10, jurisdiction in matters of parental responsibility is, as a general rule, attributed to the courts of the Member State in which that child has his or her habitual residence immediately before the child was wrongfully removed or retained.
- 36 That provision gives effect to one of the aims of Regulation No 2201/2003 which is to deter the wrongful removal or retention of children between Member States (see, to that effect, judgment of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 49). It thus serves to defeat what would otherwise be the effect of the application of the general rule of jurisdiction, laid down in Article 8(1) of that regulation, in a case of the wrongful removal of the child concerned, namely the transfer of jurisdiction to the Member State where the child may have acquired a new habitual residence, following his or her wrongful removal or retention. Since that transfer of jurisdiction might secure a procedural advantage for the perpetrator of the wrongful act, Article 10 of that regulation provides that the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention are to retain, in principle, their

jurisdiction as to the substance of the case in question (see, to that effect, judgments of 1 July 2010, *Povse*, C-211/10 PPU, EU:C:2010:400, paragraphs 41 and 44, and of 24 March 2021, *MCP*, C-603/20 PPU, EU:C:2021:231, paragraph 45).

- 37 Article 15(1)(b) of Regulation No 2201/2003 provides that, by way of exception, the courts of a Member State with jurisdiction as to the substance of a case in matters of parental responsibility may request the transfer of that case, or a specific part thereof, to a court of another Member State with which the child has a particular connection, if that court is better placed to hear the case, and where the transfer is in the best interests of the child.
- 38 In order to reply to the first question referred, it is necessary to determine whether the power to request the transfer thus exceptionally granted by Article 15(1)(b) of Regulation No 2201/2003 may be exercised where the court of a Member State has jurisdiction to rule on the substance of a case in matters of parental responsibility under Article 10 of that regulation and the court to which that case would be transferred is in the Member State to which the child concerned was wrongfully removed by one of his or her parents.
- 39 In that regard, it must be borne in mind that, according to settled case-law, in interpreting a provision of EU law, it is appropriate to consider not only its wording but also its context and the objectives pursued by the legislation of which it forms part (see, to that effect, judgment of 1 October 2014, *E.*, C-436/13, EU:C:2014:2246, paragraph 37 and the case-law cited).
- 40 As regards, in the first place, the wording and context of Article 15 of Regulation No 2201/2003, it should be borne in mind, first, that that article supplements the rules of jurisdiction set out in Articles 8 to 14 of that regulation by introducing a means of cooperation by which a court of a Member State which has jurisdiction to hear the case under one of those rules may, by way of exception, transfer that case to a court of another Member State (see, to that effect, judgment of 19 November 2015, *P.*, C-455/15 PPU, EU:C:2015:763, paragraph 44).
- 41 Secondly, Article 15 of Regulation No 2201/2003 sets out, in paragraphs 2 to 6, the procedural arrangements in accordance with which that transfer is to be made. Thus, in accordance with paragraph 5, the court of the Member State that has jurisdiction as to the substance continues to exercise jurisdiction in accordance with Articles 8 to 14 of the regulation in the event that the courts of the other Member State do not accept jurisdiction within six weeks of their being seised.
- 42 In so providing, as the Advocate General observed in essence in point 59 of his Opinion, the EU legislature provided that the power to request a transfer set out in Article 15(1)(b) of Regulation No 2201/2003 may be exercised by a court of a Member State whose jurisdiction is based on Article 10 of that regulation (see, by analogy, judgment of 27 April 2023, *CM (Right of access to a child who has moved)*, C-372/22, EU:C:2023:364, paragraph 38).
- 43 Thirdly, neither the wording nor the context of Article 15 of Regulation No 2201/2003 suggests that the court of a Member State with jurisdiction as to the substance of the matter of parental responsibility under Article 10 of that regulation should decline to rely on the power to request a transfer provided for in Article 15(1)(b) of that regulation where the court called upon, as the case may be, to assume jurisdiction is in the Member State to which the child concerned was wrongfully removed by one of his or her parents.

- 44 On the contrary, it must be noted that, where the court with jurisdiction as to the substance of a dispute concerning parental responsibility derives that jurisdiction from Article 10 of Regulation No 2201/2003, the court of another Member State, which may be found to be better placed to hear the case, within the meaning of Article 15 of the regulation, will, as a general rule, be a court of the Member State to which that child has been wrongfully removed. Therefore, to exclude the application of Article 15 to a situation such as that referred to in the preceding paragraph of this judgment would remove much of the effectiveness of the power that the court with jurisdiction as to the substance on the basis of Article 10 of that regulation may exercise, pursuant to Article 15(1)(b) of the regulation, to request the transfer of the case to a court in another Member State better placed to hear it.
- 45 In the second place, as regards the objectives pursued by Regulation No 2201/2003, it should be recalled that the rules on jurisdiction that it establishes are shaped in the light of the best interests of the child which is a fundamental consideration (see, to that effect, judgments of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraph 48, and of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 71 and the case-law cited). In addition, as stated in its recital 33, that regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights and seeks in particular to ensure respect for the fundamental rights of the child as set out in Article 24 thereof.
- 46 For the remainder, it is clear from the case-law of the Court that the requirement laid down in Article 15(1) of Regulation No 2201/2003, according to which the transfer of a case to a court of another Member State must be in the best interests of the child constitutes an expression of guiding principle that was followed by the EU legislature in designing that regulation and that must determine the form of its application in cases relating to parental responsibility within its scope (see, to that effect, judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraphs 43 and 63).
- 47 That requirement necessarily means that account must be taken of the fundamental right of the child, laid down in Article 24(3) of the Charter of Fundamental Rights, to maintain on a regular basis a personal relationship and direct contact with both his or her parents (see, to that effect, judgment of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 56).
- 48 It is true that the wrongful removal of a child, following a decision taken unilaterally by one of the parents, more often than not deprives the child of the possibility of maintaining on a regular basis a personal relationship and direct contact with the other parent (see, to that effect, judgment of 1 July 2010, *Povse*, C-211/10 PPU, EU:C:2010:400, paragraph 64 and the case-law cited).
- 49 However, that does not mean that the court with jurisdiction pursuant to Article 10 of Regulation No 2201/2003 is not capable of rebutting, in view of the best interests of the child, the strong presumption in favour of maintaining its own jurisdiction derived from the regulation (see, to that effect, judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 49) and must systematically decline to exercise the power to request a transfer provided for in Article 15(1)(b) of that regulation where the court to which it envisages making that transfer is in the Member State to which the child concerned was wrongfully removed by one of his or her parents.
- 50 It means, rather, that the court with jurisdiction as to the substance, under Article 10 of Regulation No 2201/2003, must be satisfied, having regard to the specific circumstances of the case, that the transfer proposed is not likely to have a negative impact on the emotional, family and social relationships of the child concerned or on the child's material circumstances (see, to

that effect, judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraphs 58 and 59) and must make a balanced and reasonable assessment, in the best interests of the child, of all the interests involved, which must be based on objective considerations relating to the actual person of the child and his or her social environment (see, to that effect, judgment of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 60). Accordingly, if that court reaches the conclusion that the transfer of the case to a court in another Member State is contrary to the best interests of the child, that transfer must be denied.

- 51 Hence, it is not contrary to the objectives pursued by Regulation No 2201/2003 for a court with jurisdiction in matters of parental responsibility on the basis of Article 10 of that regulation to be able, exceptionally and after having taken due account, in a balanced and reasonable manner, of the best interests of the child, to request the transfer of the case of which it is seised to a court in the Member State to which the child concerned has been wrongfully removed by one of his or her parents.
- 52 In the third and last place, that outcome is not affected by the fact the court to which that transfer is envisaged being made has adopted urgent interim measures relating to the right of access of the father of that child on the basis of Article 20 of Regulation No 2201/2003, as the parties to the main proceedings submitted at the hearing before the Court in relation to the orders made by the Okresný súd Bratislava V (District Court, Bratislava V).
- 53 It should be recalled that Article 20 cannot be regarded as a provision that attributes jurisdiction to hear the substance of a case on matters of parental responsibility (see, to that effect, judgments of 15 July 2010, *Purrucker*, C-256/09, EU:C:2010:437, paragraphs 61 and 62, and of 9 November 2010, *Purrucker*, C-296/10, EU:C:2010:665, paragraphs 69 and 70).
- 54 Consequently, even supposing that the orders made by the Okresný súd Bratislava V (District Court, Bratislava V) were adopted on the basis of Article 20 of Regulation No 2201/2003, it remains the case that that situation is different from that which gave rise to the judgment of 4 October 2018, *IQ* (C-478/17, EU:C:2018:812). In the case which gave rise to that judgment, the courts seised in the two Member States in question both had jurisdiction as to the substance on matters of parental responsibility on the basis of Article 8(1) and Article 12 of Regulation No 2201/2003, respectively, which led the Court to exclude the possibility of exercising, as between those two courts, the power to request a transfer laid down in Article 15 of that regulation.
- 55 Having regard to the foregoing considerations, the answer to the first question is that Article 15 of Regulation No 2201/2003 must be interpreted as meaning that the court of a Member State, which has jurisdiction to rule on the substance of a case on the matter of parental responsibility under Article 10 of that regulation, may exceptionally request the transfer of that case, provided for by Article 15(1)(b) of the regulation, to a court of the Member State to which the child has been wrongfully removed by one of his or her parents.

### ***The second question***

- 56 By its second question, the referring court asks, in essence, whether Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the only conditions to which the possibility for the court of a Member State with jurisdiction as to the substance in matters of parental responsibility to request the transfer of the case to a court in another Member State is subject are those listed expressly in that provision, or whether that court must also take account of other

circumstances, such as the existence of proceedings for the return of the child which have been instituted pursuant to the first paragraph and point (f) of the third paragraph of Article 8 of the 1980 Hague Convention and in which a final decision has not yet been delivered.

- 57 The wording of Article 15(1) of Regulation No 2201/2003 states that the court of a Member State may request the court of another Member State to assume jurisdiction only if the three cumulative conditions listed exhaustively in that provision are met, namely that there is a ‘particular connection’ between the child and another Member State, that the court having jurisdiction as to the substance of the case considers that a court of that other Member State is ‘better placed’ to hear the case and that the transfer is in the best interests of the child, in so far as it is not liable to be detrimental to the situation of the child concerned (see, to that effect, judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraphs 50, 56 and 58, and order of 10 July 2019, *EP (Parental responsibility and court best placed)*, C-530/18, EU:C:2019:583, paragraph 31).
- 58 As regards the possible consideration, in that context, of a return application based on the provisions of the 1980 Hague Convention, it should be recalled that although, in accordance Article 60 of Regulation No 2201/2003, those provisions do not take precedence over the provisions of the regulation in relations between Member States in matters governed by it, they have a close connection with those provisions such that they may have an effect on the meaning, scope and effectiveness of those provisions (see, to that effect, Opinion 1/13 (*Accession of third States to the Hague Convention*) of 14 October 2014, EU:C:2014:2303, paragraphs 85 and 87, and judgment of 16 February 2023, *Rzecznik Praw Dziecka and Others (Suspension of the return decision)*, C-638/22 PPU, EU:C:2023:103, paragraph 63).
- 59 It follows from the foregoing that the existence of a return application based on the 1980 Hague Convention in respect of which a final decision has not yet been delivered in the Member State to which the child concerned was wrongfully removed by one of his or her parents, does not preclude, in itself, the exercise of the power to request a transfer provided for in Article 15(1)(b) of Regulation No 2201/2003. That fact must however be taken into account by the court with jurisdiction to determine whether the three conditions laid down by that provision for the transfer of the case to another court are satisfied.
- 60 As regards the specific consideration to be given to that fact when the court with jurisdiction as to the substance is assessing those three conditions, it is appropriate to give the following indications.
- 61 In the first place, as regards the condition that the child has a ‘particular connection’ with the Member State of the court to which the transfer is envisaged being made, it should be recalled that Article 15(3) of Regulation No 2201/2003 provides, exhaustively, in points (a) to (e), five alternative criteria that permit the finding that that condition is met (see, to that effect, order of 10 July 2019, *EP (Parental responsibility and court best placed)*, C-530/18, EU:C:2019:583, paragraphs 27 and 28 and the case-law cited). That list of criteria includes, in point (c) of that provision, that that Member State is the place of the child’s nationality.
- 62 In the present case, it is clear from the case file available to the Court that the children concerned in the main proceedings are Slovak nationals, with the result that they must, in accordance with Article 15(3)(c) of Regulation No 2201/2003, be found to have a ‘particular connection’ with Slovakia for the purposes of Article 15(1) of that regulation, irrespective even of the existence of return proceedings instituted by their father pursuant to the 1980 Hague Convention.

- 63 In the second place, as regards the condition that the court to which the transfer is envisaged being made must be ‘better placed’ to hear the case, it should be borne in mind, first, that a court which considers making that transfer must be satisfied that it would provide genuine and specific added value to the adoption of a decision relating to the child, compared with if it were to retain the case before it. In that context, the court having jurisdiction may take into account, among other factors, the rules of procedure in the other Member State, such as those applicable to the taking of evidence required for dealing with the case. However, the court with jurisdiction should not take into consideration, within such an assessment, the substantive law of that other Member State that must be applied by the court of that other Member State, if the case were transferred to it. If the court were to take that into consideration, it would be contrary to the principles of mutual trust between Member States and mutual recognition of judgments that are the basis of Regulation No 2201/2003 (see, to that effect, judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraphs 57 and 61).
- 64 Secondly, where the transfer provided for in Article 15(1)(b) of Regulation No 2201/2003 is clearly likely to deprive the parent seeking the return of the child of the opportunity to present his or her arguments effectively before the court to which that transfer is envisaged being made, that risk would preclude the finding that that court is ‘better placed’ to hear the case, for the purposes of that provision.
- 65 In the present case, it should be noted that nothing in the file before the Court appears to suggest that, in the event of a transfer to the Okresný súd Bratislava V (District Court, Bratislava V), TT would be deprived of the opportunity of advancing his arguments effectively, which it is for the referring court to ascertain.
- 66 Thirdly, as the Advocate General observed in point 80 of his Opinion, the transfer may be such as to provide genuine and specific added value to the adoption of a decision relating to the child where the court to which the transfer is envisaged being made has, at the request of the parties to the main proceedings and in accordance with the applicable rules of procedure, adopted a series of urgent provisional measures based, *inter alia*, on Article 20 of Regulation No 2201/2003. Admittedly, as noted in paragraph 53 of the present judgment, the latter provision does not confer jurisdiction as to the substance of a case in matters of parental responsibility. However, it cannot be ruled out that, in the light of the factors thus brought to its attention by the interested parties, that court may be better placed to ascertain all the factual circumstances relating to the life and needs of the child concerned and to take appropriate decisions with regard to that child, taking account of the criterion of proximity.
- 67 Fourthly, where an application for return, based on the provisions of the 1980 Hague Convention, has been lodged with the competent authorities of the Member State to which the child concerned has been wrongfully removed, no court of that Member State may be held to be ‘better placed’ to hear the case, for the purposes of Article 15(1) of Regulation No 2201/2003, before the period of six weeks laid down in Article 11 of that convention and Article 11 of that regulation has expired. Furthermore, a substantial delay by the courts of that Member State in ruling on that return application is capable of constituting a factor weighing against a finding that those courts are better placed to rule on the substance of rights of custody.
- 68 As is clear from Article 16 of that convention, after having been informed of the wrongful removal of a child, the courts of the contracting State to which the child has been removed cannot rule on the substance of rights of custody until it has been established that, *inter alia*, the conditions for

the return of the child are not met. Therefore the referring court is required to take particular account of that factor in its assessment of the second condition laid down in Article 15(1) of Regulation No 2201/2003.

- 69 In the third place, the same is true as regards the assessment of the condition relating to the best interests of the child, which, in the light of Article 16 of the 1980 Hague Convention, cannot disregard the temporary impossibility for the courts of the Member State to which the child was wrongfully removed by one of his or her parents to adopt a decision on the substance of rights of custody, consistent with those best interests, before the court of that Member State hearing the application for the return of that child has, at the very least, ruled on that application.
- 70 In the light of the foregoing considerations, the answer to the second question is that Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the only conditions to which the possibility for the court of a Member State with jurisdiction as to the substance of a case in matters of parental responsibility to request that that case be transferred to a court of another Member State is subject are those expressly set out in that provision. When examining those conditions in respect of, first, the existence in the latter Member State of a court better placed to hear the case and, second, the best interests of the child, the court of the first Member State must take into consideration the existence of proceedings for the return of that child which have been instituted pursuant to the first paragraph and point (f) of the third paragraph of Article 8 of the 1980 Hague Convention and in which a final decision has not yet been delivered in the Member State to which that child was wrongfully removed by one of his or her parents.

### Costs

- 71 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. **Article 15 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 the court of a Member State, which has jurisdiction to rule on the substance of a case on the matter of parental responsibility under Article 10 of that regulation, may exceptionally request the transfer of that case, provided for by Article 15(1)(b) of the regulation, to a court of the Member State to which the child has been wrongfully removed by one of his or her parents.**

2. **Article 15(1) of Regulation No 2201/2003**

**must be interpreted as meaning that the only conditions to which the possibility for the court of a Member State with jurisdiction as to the substance of a case in matters of parental responsibility to request that that case be transferred to a court of another Member State is subject are those expressly set out in that provision. When examining those conditions in respect of, first, the existence in the latter Member State of a court better placed to hear the case and, second, the best interests of the child, the court of**

**the first Member State must take into consideration the existence of proceedings for the return of that child which have been instituted pursuant to the first paragraph and point (f) of the third paragraph of Article 8 of the Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980 and in which a final decision has not yet been delivered in the Member State to which that child was wrongfully removed by one of his or her parents.**

[Signatures]