Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

24 March 2021*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Area of freedom, security and justice – Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Article 10 – Jurisdiction in matters of parental responsibility – Abduction of a child – Jurisdiction of the courts of a Member State – Territorial scope – Removal of a child to a third State – Habitual residence acquired in that third State)

In Case C-603/20 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court of Justice (England & Wales), Family Division (United Kingdom), made by decision of 6 November 2020, received at the Court on 16 November 2020, in the proceedings

SS

v

MCP,

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fifth Chamber, M. Ilešič, C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the request of 6 November 2020 by the referring court, received at the Court on 16 November 2020, that the reference for a preliminary ruling be dealt with under the urgent procedure, in accordance with Article 107 of the Court's Rules of Procedure,

having regard to the decision of 2 December 2020 of the Fifth Chamber granting that request,

having regard to the written procedure and further to the hearing on 4 February 2021,

after considering the observations submitted on behalf of:

– SS, by A. Tayo, Barrister, instructed by J. Dsouza, Solicitor,

– MCP, by A. Metzer QC and C. Proudman, Barrister, instructed by H. Choudhery, Solicitor,

* Language of the case: English

– the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 23 February 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2000 L 338, p. 1), as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1) ('Regulation No 2201/2003').

2 The request has been made in proceedings between SS, the father of a young child, P, and MCP, the mother of that child, concerning an action brought by the father seeking an order for the return of the child to the United Kingdom and a ruling on access rights.

Legal context

International law

The 1980 Hague Convention

3 The Convention on the Civil Aspects of International Child Abduction, signed on 25 October 1980 in the framework of the Hague Conference on Private International Law ('the 1980 Hague Convention'), entered into force on 1 December 1983. All the Member States of the European Union are contracting parties to that convention.

4 The 1980 Hague Convention contains various provisions intended to ensure the prompt return of a child who is wrongfully removed or retained.

5 Article 16 of the 1980 Hague Convention provides that, after receiving notice of a wrongful removal or retention of a child, within the meaning of Article 3 of that convention, the judicial or administrative authorities of the contracting State to which the child has been removed or in which it has been retained are not to decide on the merits of rights of custody until it has been determined that the child is not to be returned under that convention or unless an application under that convention is not lodged within a reasonable time following receipt of the notice.

The 1996 Hague Convention

6 The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, signed at the Hague on 19 October 1996 ('the 1996 Hague Convention'), has been ratified or acceded to by all the Member States of the European Union.

7 That convention lays down rules intended to improve the protection of children in international situations and to avoid conflicts between the legal systems of the signatory States in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children.

8 As regards child abductions, Article 7(1)(a) and (b) of that convention provide:

'1 In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another 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 State for a period of at least one year after the person, institution or any other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.'

9 Article 52(2) and (3) of the 1996 Hague Convention read as follows:

'2. This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

3. Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.'

European Union law

10 Recitals 12 and 33 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.

…

(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 of the European Union'.

11 Article 1(1) and (2) of that regulation, that article being headed 'Scope', are worded as follows:

'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;

…'

12 Article 2 of that Regulation, headed '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;

…

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.'

13 Within Chapter II of that regulation, entitled 'Jurisdiction', in Section 2 thereof entitled 'Parental responsibility', Article 8(1), that article being 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.'

14 Article 10 of Regulation No 2201/2003, 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.'

15 Article 12 of that regulation, on prorogation of jurisdiction, is worded as follows:

'1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

…

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State; and

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.'

4. Where the child has his or her habitual residence in the territory of a third State which is not a contracting party to [the 1996 Hague Convention], jurisdiction under this Article shall be deemed to be in the child's interest, in particular if it is found impossible to hold proceedings in the third State in question.'

16 Article 14 of that regulation, headed 'Residual jurisdiction', provides:

'Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State.'

17 Article 60 of that regulation, headed 'Relations with certain multilateral conventions', 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];'.

18 Article 61 of Regulation No 2201/2003, which deals with relations with the 1996 Hague Convention, provides:

'As concerns the relation with [the 1996 Hague Convention], this Regulation shall apply:

(a) where the child concerned has his or her habitual residence on the territory of a Member State;

…'

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

19 SS and MCP, two Indian citizens who both have leave to remain in the United Kingdom, were a couple, but not legally married, when their child P, a citizen of the United Kingdom, was born in 2017.

20 SS is named as the father on the birth certificate, and consequently he has, in accordance with the findings of the referring court, parental responsibility with respect to P.

21 In October 2018 the mother, MCP, went to India with the child. After several months, the mother returned to the United Kingdom without the child.

22 Except for a short stay in the United Kingdom in April 2019, the child has remained in India, where she lives with her maternal grandmother.

23 In the opinion of the referring court, it is very probable that the conduct of the mother amounts to the child's wrongful removal to, and/or retention in, India.

24 The father's wish is that P should live with him in the United Kingdom and, in the alternative, that he should be able to have contact with her through rights of access.

25 For that purpose, on 26 August 2020 he submitted an application to the referring court, seeking, first, an order for the return of the child to the United Kingdom and, second, a ruling on rights of access.

26 According to the referring court, the mother has challenged the jurisdiction of the courts of England & Wales, since the child is not habitually resident in the United Kingdom.

27 Before giving a ruling, the referring court considers that it is necessary to determine whether it has jurisdiction on the basis of Regulation No 2201/2003. In that regard, that court found, first, that, at the time when it was seised, the child was habitually resident in India and was fully integrated into an Indian social and family environment, her concrete factual connections with the United Kingdom being non-existent, apart from citizenship, and, second, that the mother had at no time unequivocally accepted that the courts of England &Wales had jurisdiction to deal with issues of parental responsibility concerning P. Further to that finding, the referring court decided that its jurisdiction could not be based on Article 8 and Article 12(3) of that regulation.

28 With respect to Article 10 of that regulation, which establishes the grounds of jurisdiction in cases of wrongful removal or retention of a child, the referring court harbours doubts, in particular, as to whether that provision can apply to a conflict of jurisdiction between the courts of a Member State and the courts of a third State.

29 In that regard, the referring court considers that it follows clearly from the wording of that provision and from the interpretation set out in section 4.2.1.1 of the Practice Guide for the application of Regulation No 2201/2003, published by the European Commission, that the rule laid down in Article 10 of that regulation concerns only conflicts of jurisdiction between Member States and not those between a Member State and a third State. The referring court states that the Court has already upheld that interpretation in paragraph 33 of the judgment of 17 October 2018, *UD* (C-393/18 PPU, EU:C:2018:835), following, in that regard, the Opinion of Advocate General Saugmandsgaard Øe of 20 September 2018, delivered in the same case (C-393/18 PPU, EU:C:2018:749). Some domestic case-law, however, gives that provision a wider territorial reach.

30 In those circumstances, the High Court of Justice (England & Wales), Family Division, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 10 of [Regulation No 2201/2003] retain jurisdiction, without limit of time, in a Member State if a child habitually resident in that Member State was wrongfully removed to (or retained in) a non-Member State where she, following such removal (or retention), in due course became habitually resident?'

Request for the urgent preliminary ruling procedure

31 The referring court requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.

32 In that regard, it is common ground, first, that the reference for a preliminary ruling concerns the interpretation of Regulation No 2201/2003, which was adopted in particular on the basis of Article 61(c) EC, now Article 67 TFEU, which is in Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice, meaning that the reference falls within the scope of the urgent preliminary ruling procedure defined in Article 107 of the Rules of Procedure and, second, that the answer to the question referred is decisive for the outcome of the dispute in the main proceedings, since the jurisdiction of the court seised under EU law is dependent on that answer.

33 As regards the criterion of urgency, since the young child has lived permanently in India since October 2018, except for a short stay in the United Kingdom, there is a risk that the prolongation of that situation may cause serious, possibly irremediable, damage to the relationship between the child and her father, or even between the child and both parents. That situation may bring about irreparable harm to her emotional and psychological development in general, having regard, in particular, to the fact that the child is at a developmentally sensitive age.

34 Further, since the social and family integration of the child is already well advanced in the third country where she currently is habitually resident, according to the findings of the referring court, the prolongation of that situation may further jeopardise the integration of the child in her family and social environment in the event of any return to the United Kingdom.

35 In those circumstances, on 2 December 2020 the Fifth Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the question referred for a preliminary ruling

36 By its question, the referring court seeks to ascertain, in essence, whether Article 10 of Regulation No 2201/2003 must be interpreted as meaning that, if the finding is made that a child has acquired, at the time when the application relating to parental responsibility is brought, his or her habitual residence in a third State following abduction to that State, the courts of the Member State where the child was habitually resident immediately before his or her abduction, retain their jurisdiction indefinitely.

37 In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 61 and the case-law cited). The origins of a provision of EU law may also provide information relevant to its interpretation (judgment of 20 December 2017, *Acacia and D'Amato*, C-397/16 and C-435/16, EU:C:2017:992, paragraph 31 and the case-law cited).

38 As regards, first, the wording of Article 10 of Regulation No 2201/2003, it is clear that that article provides, with respect to jurisdiction in the event of child abduction, that the courts of the Member State where the child was habitually resident immediately before his or her wrongful removal or retention are to retain that jurisdiction, but that that jurisdiction is to be transferred to the courts of another Member State as soon as the child has acquired a habitual residence in the latter Member State and, in addition, one of the alternative conditions set out in Article 10 is satisfied.

39 It is apparent, accordingly, from the wording of Article 10 of Regulation No 2201/2003 that the criteria selected in that provision for the purposes of conferring jurisdiction in cases of child abduction relate to a situation which is confined to the territory of the Member States. Jurisdiction is conferred, as a general rule, on the courts of the Member State where the child was habitually resident before he or she was wrongfully removed to, or retained in, another Member State, subject to the qualification that that jurisdiction may be transferred, if certain specific conditions are met, to the courts of the Member State in which that child has acquired his or her new habitual residence following the wrongful removal or retention.

40 The fact that that article uses the expression 'Member State' and not the words 'State' or 'third State', and that it provides that the conferral of jurisdiction is subject to current or previous habitual residence 'in a Member State', while making no reference to the possibility of a residence being acquired in the territory of a third State, also implies that that article deals solely with jurisdiction in cases of child abductions from one Member State to another.

41 It should be added that the Court has previously held, in the context of proceedings relating to the interpretation of Article 8 of Regulation No 2201/2003, that the wording of Article 10 of that regulation necessarily implies that the application of that latter provision is dependent on a potential conflict of jurisdiction between courts in a number of Member States (judgment of 17 October 2018, *UD*, C-393/18 PPU, EU:C:2018:835, paragraph 33).

42 Further, it must be stated, as the Commission did at the hearing, that Article 10 of Regulation No 2201/2003 consists of a single sentence, meaning that it is apparent from the very structure of that provision that it forms an indivisible whole. Consequently, that provision cannot be read as having two distinct components, one of which separately provides that the indefinite retention, as a matter of principle, of jurisdiction by the courts of a Member State, in the event of the abduction of a child to a third State, is justified.

43 As regards, second, the context of Article 10 of Regulation No 2201/2003, it should be observed that that provision constitutes a special ground of jurisdiction with respect to the general ground laid down in Article 8(1) of that regulation, which provides that the courts of the Member State where a child is habitually resident are, as a general rule, to have jurisdiction in matters of parental responsibility.

44 According to the wording of Article 8(2) of that regulation, Article 8(1) is to be subject to the provisions of Articles 9, 10 and 12.

45 In that regard, it must be emphasised, in the first place, that the special ground of jurisdiction provided for in Article 10 of Regulation No 2201/2003 defeats what would otherwise be the effect of the application of the general ground of jurisdiction, laid down in Article 8(1) of that regulation, in a case of child abduction, namely the transfer of jurisdiction to the Member State where the child may have acquired a new habitual residence, following his or her abduction. Since that transfer of jurisdiction might secure a procedural advantage for the perpetrator of the wrongful act, Article 10 of that regulation provides, as has been stated in paragraph 39 of the present judgment, that the courts of the Member State where the child was habitually resident before the wrongful removal or retention are, nonetheless, to retain their jurisdiction unless certain conditions are met.

46 However, where the child has acquired a habitual residence outside the European Union, after being wrongfully removed to or retained in a third State, there is no room for the application of Article 8(1) of that regulation, given the absence of habitual residence in a Member State. Indeed, that provision does not deal with such a situation. It follows that, in those circumstances, the rule laid down in Article 10 of that regulation, whereby it is possible to set aside the jurisdiction which could be claimed, on the basis of the general ground, by the courts of the Member State where the new habitual residence has been acquired, loses its *raison d'être*, and there is not, therefore, any reason to apply it. Consequently, Article 10 does not justify indefinite retention of jurisdiction by the courts of the Member State where the child was habitually resident before his or her wrongful removal or retention, when that child has been abducted to a third State.

47 In the second place, it must be recalled that a special ground of jurisdiction must be interpreted restrictively and cannot, therefore, give rise to an interpretation that goes beyond the situations expressly envisaged by the regulation concerned (see, to that effect, judgments of 3 October 2013, *Pinckney*, C-170/12, EU:C:2013:635, paragraph 25; of 16 January 2014, *Kainz*, C-45/13, EU:C:2014:7, paragraph 22 and the case-law cited; and of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 27).

48 Consequently, a rule of that sort must not be interpreted taking into account only one part of its wording so as to apply that part independently. That would indeed be the case if an interpretation of Article 10 of Regulation No 2201/2003 were based exclusively on one element in the first part of that article, in order to reach the conclusion that, where a child has been abducted to a third State, the courts of the Member State where that child was habitually resident previously are to retain their jurisdiction, as a matter of principle and indefinitely, given that the other condition laid down in the same article, concerning the acquisition of a habitual residence in another Member State, cannot be satisfied.

49 In the third place, such an interpretation would bring within the scope of Article 10 a situation, namely the abduction of a child to a third State, that the EU legislature did not intend to include.

50 In that regard, it is apparent from the legislative history of Regulation No 2201/2003 that the EU legislature wanted to establish strict rules with respect to child abductions within the European Union, but that it did not intend those rules to apply to child abductions to a third State, since such abductions were to be covered, inter alia, by international conventions such as the 1980 Hague Convention, which was already in force in all the Member States at the time of the Proposal for a

Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance, presented by the Commission on 3 May 2002 (COM(2002) 222 final) (OJ 2002 C 203 E, p. 155) (the 'proposal for a regulation'), which gave rise to Regulation No 2201/2003, and the 1996 Hague Convention, to which many Member States had not yet been able to accede at that time.

51 That emerges very clearly from the explanatory memorandum of that proposal for a regulation, which states that, 'for the purpose of covering international situations, the Commission presented … a proposal for a Council decision authorising the Member States to sign the 1996 Hague Convention' (COM(2002) 222 final/2, p. 3).

52 The desire of the EU legislature to ensure the coexistence of the EU body of rules in relation to child abduction with the body of rules established by international conventions is set out in the explanatory statement of the report of the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs of 7 November 2002, on the proposal for a regulation (final A5-0385/2002, p. 19), which states that that proposal, in providing a clear and coherent body of rules for child abduction within the European Union, constitutes 'an instrument which may provide a more integrated system within the European Union and operate alongside the 1980 and 1996 Hague Conventions in the international sphere'.

53 If Article 10 of Regulation No 2201/2003 were to be interpreted as meaning that the Member State where a child was previously habitually resident retained its jurisdiction indefinitely where the child had been abducted to a third State, that would have the consequence that, where the child has acquired a habitual residence in a third State which is a contracting party to the 1996 Hague Convention, following an abduction, Article 7(1) and Article 52(3) of that convention would be deprived of any effect.

54 Article 7(1) of the 1996 Hague Convention makes provision, like Article 10 of Regulation No 2201/2003, for a transfer of jurisdiction to the courts of the State where the child has acquired a new habitual residence, if certain conditions are satisfied. Those conditions are connected, in particular, to the passage of time together with acquiescence or inaction on the part of the person concerned who holds a right of custody, the child having become settled in his or her new environment.

55 That possibility of a transfer of jurisdiction would, however, be definitively precluded if, by virtue of Article 10 of the regulation, the courts of a Member State were to retain indefinitely their jurisdiction. By the same token, that retention of jurisdiction would also be contrary to Article 52(3) of the 1996 Hague Convention, which prohibits rules agreed between one or more contracting States on matters regulated by that convention – such as the body of rules laid down by Regulation No 2201/2003 – from affecting, in the relationships of those States with the other contracting States, the application of the provisions of that convention. To the extent that jurisdiction in matters of parental responsibility could not be transferred to those courts of contracting States, those relations would necessarily be affected.

56 The consequence would be that the Member States, which have all ratified or acceded to the 1996 Hague Convention, would find themselves compelled to act, pursuant to EU law, in a way that was incompatible with their international obligations.

57 It is apparent from the foregoing that the specific body of rules which the EU legislature intended to establish by means of the adoption of Regulation No 2201/2003 concerns child abductions from one Member State to another. It follows that the relevant ground of jurisdiction, namely the ground deriving from Article 10 of Regulation No 2201/2003, cannot be interpreted in such a way as to apply to child abduction to a third State.

58 Third, it is clear that an interpretation of Article 10 of Regulation No 2201/2003 that resulted in an indefinite retention of jurisdiction would not be compatible with one of the fundamental objectives pursued by that regulation, namely that of respecting the best interests of the child, by giving priority, for that purpose, to the criterion of proximity (see, to that effect, judgments of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 51 and the case-law cited, and of 17 October 2018, *UD*, C-393/18 PPU, EU:C:2018:835, paragraph 48).

59 According to the explanatory memorandum of the proposal for a regulation (COM(2002) 222 final/2, p. 12), the EU legislature wanted to establish, precisely with respect to the conferral of jurisdiction in a case of child abduction, a balance between, on the one hand, the need to prevent the perpetrator of the abduction from reaping the benefit of his or her wrongful act (see, to that effect, judgment of 1 July 2010, *Povse*, C-211/10 PPU, EU:C:2010:400, paragraph 43) and, on the other, the value of allowing the court that is closest to the child to hear actions relating to parental responsibility.

60 If the jurisdiction of the courts of the Member State of origin were to be retained unconditionally and indefinitely, notwithstanding the fact that the abduction to the third State has, in the meantime, met, inter alia, acquiescence on the part of any person, institution or other body holding rights of custody, and without there being any condition allowing for account to be taken of the specific circumstances characterising the situation of the child concerned, or for the best interests of that child to be protected, that retention of jurisdiction would prevent the court regarded as best placed to assess the measures to be adopted in the best interests of the child from being able to hear applications in relation to such measures. Such an outcome would be contrary to the objective pursued by Regulation No 2201/2003, which must be read, as is clear from recital 33 of that regulation, in the light of Article 24 of the Charter of Fundamental Rights of the European Union.

61 Further, the interpretation of Article 10 of Regulation No 2201/2003 in such a way as to result in retention of jurisdiction for an unlimited period would also disregard the logic of the mechanism of prompt return or non-return established by the 1980 Hague Convention. If, in accordance with Article 16 of that convention, it is established that the conditions laid down by that convention for return of the child are not satisfied, or if an application under that convention has not been made within a reasonable time, the authorities of the State to which the child has been removed or in which the child has been retained become the authorities of the State of habitual residence of the child, and should, as the courts that are geographically closest to that place of habitual residence, have the power to exercise their jurisdiction in matters of parental responsibility. That convention remains applicable, in particular, in relations between the Member States and the other contracting parties to that convention, in accordance with Article 60(e) of that regulation.

62 It follows from the foregoing that there is no justification for an interpretation of Article 10 of Regulation No 2201/2003 that would result in indefinite retention of jurisdiction in the Member State of origin in a case of child abduction to a third State, neither in the wording of that article, nor in its context, nor in the *travaux préparatoires*, nor in the objectives of that regulation. Such an interpretation would also deprive of effect the provisions of the 1996 Hague Convention in a case of child abduction to a third State which is a contracting party to that convention, and would be contrary to the logic of the 1980 Hague Convention.

63 It follows that, in a situation where a child has been abducted to a third State, where the child has acquired, following that abduction, a habitual residence, and the court of a Member State seised of an action on parental responsibility finds that, in the absence of agreement on jurisdiction between the parties to the proceedings, its jurisdiction cannot be based on Article 12 of Regulation No 2201/2003, as is the case in the main proceedings, the court of the Member State concerned will have to establish its jurisdiction on the basis of any bilateral or multilateral international conventions that may be applicable, or, in the absence of such an international convention, on the basis of the rules of its national law, in accordance with Article 14 of that regulation.

64 In the light of all the foregoing, the answer to the question referred is that Article 10 of Regulation No 2201/2003 must be interpreted as meaning that it is not applicable to the situation where a finding is made that a child has, at the time when an application relating to parental responsibility is brought, acquired his or her habitual residence in a third State following abduction to that State. In that situation, the jurisdiction of the court seised will have to be determined in accordance with the applicable international conventions, or, in the absence of any such international convention, in accordance with Article 14 of that regulation.

Costs

65 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 (Fifth 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, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004, must be interpreted as meaning that it is not applicable to a situation where a finding is made that a child has, at the time when an application relating to parental responsibility is brought, acquired his or her habitual residence in a third State following abduction to that State. In that situation, the jurisdiction of the court seised will have to be determined in accordance with the applicable international conventions, or, in the absence of any such international convention, in accordance with Article 14 of that regulation.

Regan Lenaerts Ilešič

Lycourgos Jarukaitis

Delivered in open court in Luxembourg on 24 March 2021.

A. Calot Escobar
Registrar

E. Regan
President of the Fifth Chamber