



Reports of Cases

OPINION OF ADVOCATE GENERAL

PIKAMÄE

delivered on 14 July 2021¹ⁱ

Case C-262/21 PPU

A

v

B

(Request for a preliminary ruling from the Korkein oikeus (Supreme Court, Finland))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility – Regulation (EC) No 2201/2003 – Scope *ratione materiae* – Definition of ‘civil matters’ – Application for international protection of a minor child made by the parent – Regulation (EU) No 604/2013 – Decision to transfer the minor child to the Member State responsible for examining the application – Application for return – Wrongful removal or retention of a child – Article 2(11) – Classification – 1980 Hague Convention – Habitual residence – Wrongful act)

I. Introduction

1. Can a decision to transfer a minor child adopted in application of Regulation (EU) No 604/2013² and following an application for international protection of that child made by one of the parents, without the other parent’s consent, fall within the scope *ratione materiae* of Regulation (EC) No 2201/2003³ and, if so, constitute the international abduction of that child?

2. This is one of the questions raised by the present case, the originality of which relates to two legal instruments of the European Union with clearly distinct objectives and on which the Court must rule for the first time.

¹ Original language: French.

² Regulation 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).

³ Council Regulation 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).

II. Legal context

A. Hague Convention of 25 October 1980

3. Article 3 of the Convention on the Civil Aspects of International Child Abduction, concluded at the Hague on 25 October 1980 ('the 1980 Hague Convention'), provides:

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

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

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

4. Article 12 of that convention states:

'Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.'

5. Article 13 of that convention is worded as follows:

'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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.'

B. European Union law

1. Regulation No 2201/2003

6. Recital 5 of Regulation No 2201/2003 states as follows:

'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.'

7. Recital 10 of Regulation No 2201/2003 provides:

'This Regulation is not intended to apply to matters relating to social security, public measures of a general nature in matters of education or health or to decisions on the right of asylum and on immigration. ...'

8. Recital 17 of Regulation No 2201/2003 states:

'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.'

9. Article 1 of Regulation No 2201/2003, entitled 'Scope', is thus worded:

'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;

...'

10. Article 2 of that regulation, which is entitled 'Definitions', states:

'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.'

11. Article 11 of that regulation provides:

'1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 ... in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

...

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.'

2. Regulation No 604/2013

12. Article 12 of Regulation No 604/2013 provides:

‘1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

...

3. 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;
- (b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;
- (c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

...’

13. Under Article 29(1) of that regulation:

‘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).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.’

C. Finnish law

14. The return of the child is governed by the laki lapsen huollosta ja tapaamisoikeudesta 361/1983 (Law on child custody and the right of access), as amended by Law 186/1994. The provisions of that law correspond to the provisions of the 1980 Hague Convention.

III. Background to the dispute, the procedure in the main proceedings and the questions referred for a preliminary ruling

15. It is apparent from the order for reference and from the responses to the Court's requests for information and documents that the dispute in the main proceedings is between two Iranian nationals, the parents of a child who is 20 months old.

16. In 2016, the father and mother resided in Finland. The mother was issued with a residence document for Finland on the ground of family ties (the father had a residence document as an employed person) for a period of four years from 28 December 2017. In May 2019, the parents moved to Sweden and the mother obtained a residence document for Sweden on the ground of family ties for the period from 11 March 2019 to 16 September 2020. A common child was born in Sweden on 5 September 2019 and the parents had joint custody.

17. By decision of 11 November 2019, the Swedish authorities placed the mother and child in a hostel because of domestic violence suffered by the mother. That decision was confirmed by judgment of 17 January 2020. 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. On 7 August 2020, the mother submitted an application for international protection for herself and for the child relying on domestic violence against her by the father and, in the event of return to Iran, threats of 'honour' violence made by the father's family. On 27 August 2020, the Republic of Finland informed the Kingdom of Sweden that, in application of Article 12(3) of Regulation No 604/2013, it was responsible for examining the application.

18. On 27 October 2020, the Swedish authority competent in immigration matters rejected the applications for asylum of the mother and child as inadmissible, decided to take no further action on the application for a residence document submitted by the father on behalf of the child based on the family tie and decided to transfer the mother and the child to Finland in application of Regulation No 604/2013. On 24 November 2020, the mother and the child were transferred to Finland in application of Article 29 of Regulation No 604/2013, resulting in the lifting of the decision to take the child into care. On 11 January 2021, the mother applied to Finland for asylum for herself and for the child. The application for asylum is still pending.

19. On 7 December 2020, the father lodged an appeal against the decision of 27 October 2020 of the Swedish immigration authority, in so far as it decided to take no further action on his application for a residence document and transferred the child to Finland. By judgment of 21 December 2020, a Swedish court annulled that decision because the father had not been heard during the procedure and referred the case back to that authority. Re-examining the file, the Swedish immigration authority decided, by decision of 29 December 2020, it would take no further action in the cases concerning the child since the child had left the national territory. A Swedish court, ruling on 6 April 2021 following an appeal lodged on 19 January 2021 by the father against the decision of 29 December 2020, rejected the father's claims seeking, in

particular, an order that the child be returned to Sweden in application of Regulation No 604/2013. According to information from the Swedish immigration authority, the child does not currently have a valid residence document in Sweden or therefore the right to enter Sweden.

20. At the same time, by an interlocutory order made in November 2020, a Swedish court maintained the joint custody of the child's two parents. By judgment of 29 April 2021, that court granted the parents' divorce, awarded sole custody of the child to the mother with immediate effect, rejected the request for access rights made by the father and declared the interlocutory order of November 2020 to be void.

21. Claiming that the child had been wrongfully removed or retained, the father brought an action before the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland) on 21 December 2020 seeking an order for the prompt return of the child to Sweden. By decision of 25 February 2021, the Helsingin hovioikeus (Court of Appeal, Helsinki) dismissed the application. The father brought an appeal against that decision before the Korkein oikeus (Supreme Court, Finland). In the examination of the appeal, that court decided, on 23 April 2021, 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 [Regulation No 2201/2003], 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 Regulation [No 604/2013], must be classified as wrongful removal?
- (2) If the answer to the first question is in the negative, must Article 2(11) [of Regulation No 2201/2003], 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?⁴
- (3) If, in the light of the answer to the first or the second question, [Article 2(11) of Regulation No 2201/2003] 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 1980 Hague Convention be interpreted as precluding the child's return, either
 - (a) 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
 - (b) 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

⁴ The wording of the second question referred is reformulated here, as specified by the referring court in its answer given on 21 May 2021 to the Court's informal request for information.

(c) 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 1980 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 [Regulation No 2201/2003], in conjunction with the concept of the child's best interests, referred to in Article 24 of the Charter of Fundamental Rights of the European Union [(‘the Charter’)], 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, 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, within the meaning of the fourth question, to take the measures referred to above, is it necessary, in the light of Article 24 of the Charter, to interpret Article 20 of the 1980 Hague Convention, in the situations referred to in the third question, points (a) to (c), 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?’

IV. Procedure before the Court

22. 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. The First Chamber of the Court decided, on 12 May 2021, on the basis of the Judge-Rapporteur's proposal and after hearing the Advocate General, to grant that request.

23. On 21 May 2021, the referring court responded to the Court's informal request for information. By document of 31 May 2021, the Swedish Government responded to written questions asked by the Court and produced the documents required.

24. The defendant in the main proceedings, the Finnish Government and the European Commission submitted written observations. Those parties and the applicant in the main proceedings presented oral argument at the hearing on 28 June 2021.

V. Analysis

A. The first and second questions

1. Preliminary observations

25. In the first place, it is apparent from the wording of the first two questions that the referring court is concerned, in essence, about the consequences of a decision to transfer a child and his mother taken in application of Regulation No 604/2013 as regards the classification of ‘wrongful removal or retention’ as defined in Article 2(11) of Regulation No 2201/2003. Those two questions thus share a common theme, so it is appropriate to examine them together.

26. In the second place, the referring courts submitted those questions relating to the interpretation of Article 2(11) of Regulation No 2201/2003 based on the premiss that that provision is applicable to the dispute in the main proceedings, which is challenged by the defendant in the main proceedings, supported by the Commission. Since the applicability of the provisions of Regulation No 2201/2003 gives rise to difficulty and was the subject of discussion at the hearing before the Court, it is necessary to examine whether a situation such as that described by the order for reference falls within the scope of that regulation.⁵ If so, it will be necessary to examine the criteria for classification as ‘wrongful removal or retention’.

2. Applicability of Regulation No 2201/2003

27. The defendant in the main proceedings, supported by the Commission, claims, first, that the application of Regulation No 604/2013 concerns the exercise by Member States of state authority outside civil law matters covered by Regulation No 2201/2003 and, second, that decisions concerning the right of asylum and immigration are expressly excluded from the scope of the latter regulation.

28. I find it difficult to endorse such analysis. It should be noted that Regulation No 2201/2003 applies, according to Article 1(1)(b) thereof, in civil matters relating to the attribution, exercise, delegation, restriction or termination of parental responsibility. In that connection, the Court has repeatedly held that 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’, including, in the light of recital 5 of Regulation No 2201/2003, measures for the protection of the child.⁶ In line with this broad approach, the expression ‘civil matters’ also extends to protective measures which, even from the point of view of the law of a Member State, fall under public law.⁷ Such an approach to ‘civil matters’ thus requires examining whether, irrespective of its classification, a measure contributes, by its nature, to the protection of the child.

⁵ See, to that effect, judgments of 18 December 2014, *McCarthy and Others* (C-202/13, EU:C:2014:2450, paragraph 30); of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 67); and of 12 March 2020, *VW (Right of access to a lawyer in the event of non-appearance)* (C-659/18, EU:C:2020:201, paragraphs 22 and 23).

⁶ See, to that effect, judgments of 27 November 2007, *C* (C-435/06, EU:C:2007:714, paragraphs 46 to 51); of 21 October 2015, *Gogova* (C-215/15, EU:C:2015:710, paragraph 26); and of 19 September 2018, *C.E. and N.E.* (C-325/18 PPU and C-375/18 PPU, EU:C:2018:739, paragraph 55).

⁷ See, to that effect, judgments of 27 November 2007, *C* (C-435/06, EU:C:2007:714, paragraphs 34, 50 and 51); of 2 April 2009, *A* (C-523/07, EU:C:2009:225, paragraph 24, 27 to 29); and of 26 April 2012, *Health Service Executive* (C-92/12 PPU, EU:C:2012:255, paragraphs 60 and 61).

29. Taking those factors into account, I consider that, in the particular circumstances of the present case, the transfer of the child under Regulation No 604/2013 falls within the scope of Regulation No 2201/2003. The decision to transfer must be considered, not in isolation, but within the framework of the entire procedure in which it arises. It follows that the transfer cannot be viewed separately from the application for international protection, of which it is a direct result. In the present case, the object⁸ of the application for international *protection* is to grant the child a permanent status protecting him from a danger to which he may be exposed. Consequently, that application amounts to a measure for the protection of the child and, therefore, falls within the scope of ‘civil matters’ within the meaning of Article 1 of Regulation No 2201/2003.

30. In my view, such a conclusion is not called into question by recital 10 of Regulation No 2201/2003, according to which that regulation ‘is not intended’ to apply to ‘decisions on the right of asylum and on immigration’. On reading that text, I infer from the use of the words ‘is not intended’⁹ that the EU legislature did not intend systematically to exclude from ‘civil matters’ all decisions on the right of asylum. Such an analysis is, moreover, in line with the broad approach adopted by the Court, which, in the light of recital 5 of that regulation, included in ‘civil matters’ measures for the protection of the child falling under public law.

31. Beyond the terms of recital 10, which in any event has no binding legal force,¹⁰ it is not apparent from the provisions of Regulation No 2201/2003 that decisions on the right of asylum are, in principle, excluded from the scope of that regulation. In support of that analysis, I observe that such decisions do not appear in Article 1(3) thereof, which provides an exhaustive list of matters excluded from the scope of that regulation.¹¹ Moreover, it cannot be argued that Article 1(2) of Regulation No 2201/2003 does not mention, among civil matters, decisions on the right of asylum. As the Court has already held, the use of the words ‘in particular’ in Article 1(2) of Regulation No 2201/2003 implies that the list contained in that provision is only to be used as a guide.¹²

32. In the light of all those considerations, I take the view, contrary to the submissions of the Commission and the defendant in the main proceedings, that decisions on the right of asylum fall within the scope of Regulation No 2201/2003 provided that, as in the present case, they are measures for the protection of the child.

3. Classification as ‘wrongful removal or retention’

33. In accordance with the logic described above, it is necessary to analyse each of the criteria for classifying the removal or retention of a child as ‘wrongful’ and to determine, in the light of the circumstances of the case, whether those conditions are met.

⁸ In the judgment of 21 October 2015, *Gogova* (C-215/15, EU:C:2015:710, paragraph 28), the Court held that, to determine whether an application falls within the scope of Regulation No 2201/2003, the focus must be on the object of the application. I note that, in the present case, it would almost suffice to stick to the wording of the application in question.

⁹ Wording that should be distinguished from the more imperative ‘does not apply’.

¹⁰ Judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for long-term residents)* (C-303/19, EU:C:2020:958, paragraph 26).

¹¹ Judgment of 13 October 2016, *Mikołajczyk* (C-294/15, EU:C:2016:772, paragraph 29). I observe, moreover, with regard to the terms of recital 10 of Regulation No 2201/2003, that the preamble to an EU act has no binding legal force and cannot be relied on as a ground either for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording (judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for long-term residents)* (C-303/19, EU:C:2020:958, paragraph 26)).

¹² See, to that effect, judgment of 27 November 2007, *C* (C-435/06, EU:C:2007:714, paragraph 30).

34. In that regard, Article 2(11) of Regulation No 2201/2003, the wording of which is very similar to that of Article 3 of the 1980 Hague Convention, covers wrongful removal or retention in the same definition. Based on that definition, the Court has stated that wrongful removal or retention within the meaning of Article 2(11) of that regulation presupposes that the child was habitually resident in the Member State of origin immediately before the removal or retention and that there is a breach of rights of custody attributed under the law of that Member State.¹³ It follows that classification as ‘wrongful removal or retention’ is based essentially on two cumulative criteria: the child’s habitual residence and the breach of rights of custody. In order to provide a useful answer to the referring court, it is therefore necessary to examine each of those two concepts in turn.

(a) *The child’s habitual residence*

35. The concept of ‘habitual residence’ can be seen from two different angles in Regulation No 2201/2003. On the one hand, it constitutes, in accordance with Article 2(11) and Article 11 of that regulation, a key element for classification as ‘wrongful removal or retention’ and of the mechanism for the return of the child provided for in such a situation. On the other, for the purposes of Articles 8 to 10 of that regulation, it constitutes a general jurisdiction criterion.¹⁴ However, since the concept of ‘habitual residence’ must be given a uniform meaning in Regulation No 2201/2003, the Court has held that the interpretation of that concept given in the context of Articles 8 and 10 of that regulation is applicable to Article 2(11) and Article 11 of that regulation.¹⁵

36. It should be noted that Regulation No 2201/2003 contains no definition of the concept of ‘habitual residence’, even though the use of the adjective ‘habitual’ implies that the child’s residence must have a certain permanence or regularity,¹⁶ and makes no express reference to the law of the Member States. The Court infers from those elements that the concept of ‘habitual residence’ should be given an independent interpretation in the light of the context of the provisions of Regulation No 2201/2003 and the objective pursued by it, in particular the objective stated in recital 12, according to which the regulation has been shaped in the light of the best interests of the child, in particular on the criterion of proximity.¹⁷

37. On that basis, the Court has decided that the child’s place of habitual residence for the purpose of Regulation No 2201/2003 is the place in which, in the light of the circumstances specific to each individual case, is the centre of that child’s life.¹⁸ Accordingly, that practical approach requires that, in addition to the physical presence of the child in a Member State, other factors must be taken into account which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of

¹³ See judgment of 9 October 2014, *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 47).

¹⁴ For more information on that distinction, see Opinion of Advocate General Wahl in *OL* (C-111/17 PPU, EU:C:2017:375, points 44 to 51).

¹⁵ See judgments of 9 October 2014, *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 54), and of 8 June 2017, *OL* (C-111/17 PPU, EU:C:2017:436, paragraph 41).

¹⁶ See judgments of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraph 44), and of 17 October 2018, *UD* (C-393/18 PPU, EU:C:2018:835, paragraph 45).

¹⁷ See judgments of 2 April 2009, *A* (C-523/07, EU:C:2009:225, paragraphs 34 and 35); of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraphs 44 to 46); of 9 October 2014, *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 50); of 8 June 2017, *OL* (C-111/17 PPU, EU:C:2017:436, paragraph 40); of 28 June 2018, *HR* (C-512/17, EU:C:2018:513, paragraph 40); and of 17 October 2018, *UD* (C-393/18 PPU, EU:C:2018:835, paragraph 45).

¹⁸ See judgment of 28 June 2018, *HR* (C-512/17, EU:C:2018:513, paragraphs 41 and 42).

integration in a social and family environment.¹⁹ In that context, it is necessary, in each individual case, to take into consideration a body of consistent evidence such as the duration, regularity, conditions and reasons for the child's stay in the territory of the different Member States concerned, the place and conditions of the child's attendance at school, and the family and social relationships of the child in those Member States.²⁰

38. Moreover, where, like in the present case, the child is of a young age, the Court has held that the assessment of the integration by the child in a social and family environment cannot disregard the circumstances surrounding the stay of people on whom he or she is dependent.²¹ The environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of²² – as a general rule its parents. Consequently, where such a child lives with its parents on a daily basis, determining the child's place of habitual residence involves determining the place where the parents are permanently present and are integrated into a social and family environment.²³ In order to determine that place, it is necessary to examine factors including, but not limited to, the duration, regularity, conditions and reasons for their stay in the territory of the different Member States concerned, their linguistic knowledge, their geographic and family origins, and the family and social relationships maintained by them. Such objective evidence may, where necessary, be complemented by taking into account the intention of the parents holding rights of custody to settle permanently with the child in a particular place which reflects the extent of integration by the parents, and therefore the child, in a social and family environment.²⁴

39. Accordingly, as observed by Advocate General Saugmandsgaard Øe in *UD*, the Court has developed what is called a 'hybrid' approach, whereby the child's habitual residence is determined on the basis, first, of objective factors that characterise the child's stay and, second, of the circumstances of the parents' stay and also of their intentions with respect to the child's place of residence.²⁵ It will be for the referring court to determine, on the basis of such factors, whether the child was habitually resident in Sweden immediately before the alleged wrongful removal or retention taking into account all the circumstances specific to the present case.

40. That being so and in order to provide the referring court with useful information, I observe, with regard to the classification as 'wrongful removal', that the child, and his mother, were transferred to Finland on 24 November 2020. Before that removal, the child had resided in Sweden since 5 September 2019 – his date of birth – whereas his parents, who have rights of custody, had lived in Sweden since May 2019 and had been issued residence documents for Sweden. It follows that, subject to additional information available to the referring court, it appears to have been established that the child's habitual residence was in Sweden prior to his removal.

¹⁹ See, to that effect, judgments of 2 April 2009, *A* (C-523/07, EU:C:2009:225, paragraphs 37 and 38); of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraphs 44, 47 to 49); of 9 October 2014, *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 51); of 8 June 2017, *OL* (C-111/17 PPU, EU:C:2017:436, paragraphs 42 and 43); and of 28 June 2018, *HR* (C-512/17, EU:C:2018:513, paragraph 41).

²⁰ See, to that effect, judgment of 2 April 2009, *A* (C-523/07, EU:C:2009:225, paragraph 39), and of 28 June 2018, *HR* (C-512/17, EU:C:2018:513, paragraph 43).

²¹ See judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraphs 53 to 55).

²² See judgment of 8 June 2017, *OL* (C-111/17 PPU, EU:C:2017:436, paragraph 45).

²³ See judgment of 28 June 2018, *HR* (C-512/17, EU:C:2018:513, paragraph 45).

²⁴ See judgments of 2 April 2009, *A* (C-523/07, EU:C:2009:225, paragraph 40), and of 8 June 2017, *OL* (C-111/17 PPU, EU:C:2017:436, paragraphs 46 and 47).

²⁵ See Opinion of Advocate General Saugmandsgaard Øe in *UD* (C-393/18 PPU, EU:C:2018:749, point 52).

41. By contrast, from the point of view of the classification as ‘retention’, it is by no means certain, in the light of the abovementioned criteria, that the child had retained his habitual residence in Sweden immediately before the alleged wrongful retention. As I have already pointed out, the habitual residence of a child of young age is closely related to that of the reference person(s) with whom the child lives, by whom the child is actually looked after and taken care of. It is apparent from the information communicated to the Court that, because of the decisions taken by the Swedish authorities following the father’s conduct, the child has very little contact with him and lives with his mother. I observe, moreover, that the removal of the child to Finland following an immediately enforceable decision to transfer originates in the application for international protection made by the mother on behalf of the child and that, since his transfer, he has been staying in Finland²⁶ with his mother and does not have the right to enter or remain in Sweden. I take the view that such factors showing that the child has put down roots in Finland may be usefully taken into account to establish the child’s habitual residence and may turn out to be decisive in finding there to be no wrongful retention.

(b) Breach of rights of custody

42. It follows from Article 2(11) of Regulation No 2201/2003 that a child’s removal or retention is wrongful where it interferes with the actual exercise of rights of custody attributed under the law of the Member State where the child was resident immediately before the removal or retention. In other words, the wrongful nature of a child’s removal or retention for the purposes of Regulation No 2201/2003 necessarily requires the existence of rights of custody, attributed under the law of the relevant Member State, in breach of which the removal or retention took place.

43. In the present case, the referring court seeks to determine whether the child’s removal, which took place in the context of a transfer to the Member State responsible for examining the application for international protection, and his retention in that Member State constitute a breach of rights of custody. In order to provide a useful answer to the referring court, it is necessary to determine the scope of the concept of ‘rights of custody’ and to define in more detail the concept of ‘breach’ of those rights. On this last point, I would point out at the outset that the fact that the child’s removal results from the application of Regulation No 604/2013 seems to me to show that the breach of rights of custody necessarily requires a wrongful act to have been committed by the perpetrator of the wrongful removal or retention.

(1) Actual exercise of rights of custody

44. Based on the definition set out in Article 2(9) of Regulation No 2201/2003, the Court has held that the term ‘rights of custody’ is an autonomous concept which must be given a uniform interpretation and that, for the purposes of applying Regulation No 2201/2003, rights of custody include, in any event, the right of the person with such rights to determine the child’s place of residence.²⁷ Although ‘rights of custody’ is defined by EU law, Article 2(11) of Regulation No 2201/2003 refers the determination of the person who has rights of custody to the law of the Member State where the child was habitually resident immediately before the removal or retention. Under that article, whether or not a child’s removal or retention is wrongful depends

²⁶ According to the child’s mother, the child attends a Finnish nursery during the day and already speaks Finnish commensurate with a child of his age. In the judgment of 9 October 2014, *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 56), the Court stated that the necessity of ensuring the protection of the best interests of the child involved taking account of factors which might demonstrate a degree of integration of the child in a social and family environment since her removal.

²⁷ See, to that effect, judgment of 5 October 2010, *McB*. (C-400/10 PPU, EU:C:2010:582, paragraph 41).

on the existence 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’. Consequently, the attribution of rights of custody either to both parents or to one of the parents is the sole responsibility of the Member State of origin.

45. It follows from the foregoing that it will be for the referring court to determine whether the father had rights of custody giving him the right to determine the child’s place of residence, attributed by the Member State where the child was habitually resident immediately before the removal or retention. In that regard, I note that, according to the information before the Court, the father and mother held rights of custody jointly until the judgment of 29 April 2021 by which a Swedish court awarded sole custody of the child to the mother with immediate effect.²⁸

46. In addition to the first legal criterion relating to the existence of rights of custody, there is a second more factual criterion. According to Article 2(11)(b) of Regulation No 2201/2003, removal or retention is classified as wrongful only if ‘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’. That additional criterion is logical, in so far as classification as ‘wrongful removal or retention’ involves implementing the mechanism for the child’s prompt return provided for by Regulation No 2201/2003. In a situation characterised by rights of custody existing in theory only, without or with very little in the way of them being actually exercised, the implementation of a procedure to ensure the child’s prompt return is not consistent with the objective of protecting the fundamental interests of the child pursued by that regulation.

47. To my knowledge, the Court has not yet had the opportunity to clarify the meaning of the criterion relating to the actual exercise of rights of custody. However, in his Opinion in *UD*, Advocate General Saugmandsgaard Øe put forward a partial definition of that concept by stating ‘that the parent who does not in fact look after the child (even if that parent has parental responsibility) will form part of the child’s family environment only in so far as the child continues to have regular contact with that parent’.²⁹ In addition, I observe that the concept of ‘actual exercise of rights of custody’ also appears in the 1980 Hague Convention, Article 3 of which defines ‘wrongful removal or retention’ in terms almost identical to those used in Article 2(11) of Regulation No 2201/2003. It is apparent that from the Explanatory Report to that convention that the question of whether rights of custody are actually exercised or not, which must be determined in the light of the circumstances of each particular case, must be understood in a broad sense³⁰ and corresponds to situations where the custodian is concerned with the care of the child’s person, even if, in actual fact, for perfectly valid reasons, the child and its guardian do not live together.³¹

48. It seems to me from the foregoing that a parent actually exercises rights of custody where he or she is concerned with the child’s care and maintains regular ties with the child. However, the scope of that criterion must be examined and applied prudently and rigorously in order to prevent any misuse for the purpose of justifying the child’s removal or retention, so as not to disregard the objective of protecting the fundamental interests of the child pursued by Regulation

²⁸ The effect of the termination of joint custody of 29 April 2021 is that the classification as ‘wrongful retention’ can, in any event, apply only to the period from 24 November 2020 to 29 April 2021.

²⁹ See Opinion of Advocate General Saugmandsgaard Øe in *UD* (C-393/18 PPU, EU:C:2018:749, point 94).

³⁰ An analysis of the decisions listed in the Incadat database (directory of the case-law of signatories to the 1980 Hague Convention) shows that this broad definition of the concept of ‘actual exercise of rights of custody’ has been adopted by the courts of the Member States.

³¹ Explanatory Report to the 1980 Hague Convention, Perez-Vera, E., paragraphs 72, 73 and 115 (<https://assets.hcch.net/docs/a5fb103c-2ceb-4d17-87e3-a7528a0d368c.pdf>).

No 2201/2003. In the context of its assessment, the referring court will have to take account of the fact that only two months after his birth, the child was the subject of a decision to take the child into care and, together with his mother, was placed in a hostel due to the father's violent behaviour and that, since that time, according to the Swedish authorities, the father has had only occasional contact with the child.

(2) *Wrongful act committed by the child's mother*

49. To clarify the last condition, reference should be made to the definition of 'wrongful removal' adopted by the 1980 Hague Convention and by Regulation No 2201/2003. With regard to the 1980 Hague Convention, I note, like the Commission, that, according to paragraph 11 of the Explanatory Report to the 1980 Hague Convention, 'the situations envisaged are those which derive from the use of force to establish artificial jurisdictional links on an international level, with a view to obtaining custody of a child'. That consideration is explained in paragraphs 12 to 15 of the Explanatory Report from which it is apparent, in essence, that the aim of the wrongful removal – the outcome of which is that the child is taken out of the family and social environment in which its life has developed – is to obtain a right of custody from the authorities of the country to which the child has been taken. In other words, by seeking to establish legal and jurisdictional links, which are more or less artificial, the person who removes the child or who is responsible for its removal seeks legal recognition of the wrongful act committed.

50. An identical definition of wrongful removal or retention is also apparent from examining the Court's judgments relating to the interpretation of Regulation No 2201/2003. Thus, the Court has noted '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'.³² Following the same logic, the Court has considered that the objective of the provisions of Regulation No 2201/2003, including those relating to the child's prompt return, is that 'one of the parents cannot strengthen his or her position on the issue of custody with respect to the child by evading, *by a wrongful act*, 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'.³³

51. It follows from these considerations that breach of rights of custody, which includes wrongful removal or retention, is understood in the same way in the 1980 Hague Convention and Regulation No 2201/2003. Under those two texts, breach of rights of custody essentially consists in the unlawful conduct of the parent responsible for the child's removal or retention to circumvent the rules of international jurisdiction. On the basis of these considerations, I take the view that, contrary to the claims made by the Finnish Government, the determination of wrongful removal or retention does not depend only on the purely substantive and objective findings that the child has been removed or retained outside the place where it is habitually resident, without the consent of the holder or co-holder of rights of custody. It is also necessary that the breach of

³² Judgments of 23 December 2009, *Detiček* (C-403/09 PPU, EU:C:2009:810, paragraph 56), and of 1 July 2010, *Povse* (C-211/10 PPU, EU:C:2010:400, paragraph 64).

³³ Judgment of 8 June 2017, *OL* (C-111/17 PPU, EU:C:2017:436, paragraph 63). See, to the same effect, judgments of 23 December 2009, *Detiček* (C-403/09 PPU, EU:C:2009:810, paragraph 57), and of 9 October 2014, *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 67). In the judgments of 1 July 2010, *Povse* (C-211/10 PPU, EU:C:2010:400, paragraph 41), and of 24 March 2021, *SS* (C-603/20 PPU, EU:C:2021:231, paragraph 45), the Court uses the common term 'abduction', which is more explicit and meaningful, and which is also used in the title of the 1980 Hague Convention.

rights of custody follows from a wrongful act committed by the parent responsible for the child's removal or retention and intended, in disregard of the child's best interests, to secure, for that parent, a practical or legal advantage to the detriment of the other parent.

52. The singularity of the present case is based on the fact that the child was removed pursuant to a decision, taken in application of Regulation No 604/2013, to transfer the child and his mother to the Member State responsible for examining the applications for international protection submitted by the mother. In that regard, it should be observed that, under Article 7(1) of Directive 2013/32/EU,³⁴ each adult with legal capacity has the right to make an application for international protection on his or her own behalf. As regards minors, Article 7(3) of Directive 2013/32 provides that they must be able to make an application for international protection on their own behalf in the Member States which grant minors the legal capacity to act in procedures and they must, in all Member States bound by that directive, be able to make an application for international protection through an adult representative, such as a parent or another adult family member. It follows from those provisions that EU legislation does not preclude several family members from each lodging an application for international protection, nor from one of them lodging his or her own application also on behalf of a minor family member.³⁵

53. In accordance with Article 20 of Regulation No 604/2013, the process of determining the Member State responsible starts as soon as an application for international protection is lodged. Under Article 20(3) of that regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member is indissociable from that of his or her family member, and is a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The Court has held that, in the absence of evidence to the contrary, Article 20(3) of Regulation No 604/2013 establishes a presumption that it is in the best interests of the child to treat that child's situation as indissociable from that of its parents.³⁶

54. The competent national authority hearing such an application for international protection will not be required to make a Member State that is to the applicant's liking responsible for the examination of the application for international protection, but must apply the criteria for determining responsibility laid down by the EU legislature in Chapter III of Regulation No 604/2013 in order to determine the Member State responsible for the examination of the application for international protection, by taking account of the best interests of the child.³⁷ On the basis of the criteria for determining the Member State responsible, the Member State with which the application for international protection was lodged may request that another Member takes charge of or takes back an applicant under the conditions set out in Articles 21, 23 and 24 of Regulation No 604/2013. If the requested Member State considers, following the checks provided for in Articles 22 and 25 of that regulation, that it is responsible for examining the application for international protection, the applicant is the subject of a decision to transfer to that Member State in accordance with Article 26 of that regulation.

55. That decision is, subject to the exercise of remedies provided for in Article 27 of Regulation No 604/2013, binding on the applicant, who may, under the conditions provided for in Article 28(2) of that regulation, be detained in order to secure transfer procedures when there is

³⁴ Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

³⁵ See judgment of 4 October 2018, *Ahmedbekova* (C-652/16, EU:C:2018:801, paragraphs 53 to 55).

³⁶ See, to that effect, judgment of 23 January 2019, *M.A. and Others* (C-661/17, EU:C:2019:53, paragraphs 87 to 90).

³⁷ See, to that effect, judgment of 7 June 2016, *Ghezelbash* (C-63/15, EU:C:2016:409, paragraph 54).

a significant risk of absconding. Pursuant to Article 29 of that regulation, the transfer must be carried out as soon as practically possible and, at the latest, within six months of acceptance of the request to take charge by the requested Member State.

56. It follows from that analysis that the application of objective criteria for determining the Member State responsible laid down in Regulation No 604/2013 requires the applicant, who does not reside in the Member State responsible for examining the application for international protection, to be subject to a binding transfer procedure. In those circumstances, the transfer of a child carried out in application of Article 29 of Regulation No 604/2013 following the application for international protection submitted on behalf of the child by one of the parents holding rights of custody, also covered by the decision to transfer, does not, *in itself*, constitute a breach of rights of custody within the meaning of Article 2(11) of Regulation No 2201/2003. In such circumstances, the child's removal results not from a wrongful act committed by that parent, but by the application of a separate regulation, which is mandatory for both Member States and applicants for international protection.

57. However, it would be different in the event that, under the guise of an application for international protection submitted for the child and him or herself, the parent intended, in reality, to commit a wrongful act in order to circumvent the rules of jurisdiction provided for by Regulation No 2201/2003.³⁸ Whilst, in any event, the assessment of whether a wrongful act has been committed falls within the jurisdiction of the national court competent to examine the individual circumstances of the present case, I take the view that, in the light of the information communicated by the referring court and the parties, such a wrongful act has not been established.³⁹

58. According to the statements made in the order for reference, no evidence has been provided to suggest that the mother abused the asylum procedure to circumvent the grounds of international jurisdiction laid down in Regulation No 2201/2003.⁴⁰ It should be noted that, having already applied on 4 December 2019 on behalf of the child for a residence document in Sweden, the mother submitted, on 7 August 2020, an application for international protection for herself and for the child to *that same country*. The fact that the mother did not inform the child's father of the application for international protection submitted to the Swedish authorities and its follow-up does not constitute, in itself, evidence of her fraudulent intention, it being observed, moreover, that her conduct occurs in a context marked by fear relating to past domestic violence. As the referring court points out, the mother submitted an application for sole custody of the child to a Swedish court on 2 September 2020, by which date the Swedish immigration authority had already stated that Finland was responsible for examining her application for international protection and the child's. Furthermore, although the mother went voluntarily to Finland, the fact remains that the removal took place in application of a binding transfer decision against which it cannot be considered that she was required to exercise the right to bring an action,⁴¹ let alone that it could be avoided.

³⁸ In the judgment of 18 December 2014, *McCarthy and Others* (C-202/13, EU:C:2014:2450, paragraph 54), the Court stated that proof of an abuse requires examining, at the very least, whether the person concerned had the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it.

³⁹ It seems to me, moreover, that the objective difficulty relating to the knowledge and understanding of the complex mechanism provided for by Regulation No 604/2013 for the purposes of determining the Member State responsible for examining an application for international protection, as well as the uncertainty as to the outcome of such a procedure, result in the finding that a strategy aimed at any misuse of those rules for the purposes of creating artificial jurisdictional links on an international level is unrealistic.

⁴⁰ See, to that effect, judgment of 8 June 2017, *OL* (C-111/17 PPU, EU:C:2017:436, paragraph 64).

⁴¹ In the judgment of 7 June 2016, *Ghezelbash* (C-63/15, EU:C:2016:409, paragraph 54), the Court stated, moreover, that the making of an application under Regulation No 604/2013 cannot be equated with forum shopping, which the Dublin system seeks to avoid.

59. In accordance with that transfer decision, the mother and the child subsequently remained in Finland without interruption, the Member State responsible for examining the applications for international protection; the procedure is currently ongoing and an interview with the child's mother was carried out on 27 May 2021. The fact remains that no request or decision to take back the mother and the child to Sweden has been made; the legal situation of the persons concerned is still that of applicants for international protection residing in Finland, the Member State responsible for examining their application. By judgment of 6 April 2021, which became final on 12 May 2021 according to the defendant in the main proceedings, a Swedish administrative court rejected the father's claims seeking that the child be returned to Sweden in application of Regulation No 604/2013. Lastly, it must be noted that neither the mother nor the child currently have a right of residence in Sweden and that a Swedish court competent in family matters awarded sole custody of the child to the mother and rejected the request for access rights made by the father.

60. I take the view that these circumstances are such as to rule out a breach of rights of custody and, thus, the classification as 'wrongful removal or retention'.

B. The third, fourth and fifth questions

61. I note, lastly, that the third, fourth and fifth questions referred for a preliminary ruling relate to the conditions under which a court hearing an application for return may reject it, in application of Article 13(b) of the 1980 Hague Convention and Article 11(4) of Regulation No 2201/2003, in order to ensure the protection of the child.

62. It is apparent from the wording of the order for reference itself that those questions are conditional. They arise only in the event that the answer given to the first two questions means that the circumstances of the case in the main proceedings can be classified as 'wrongful removal or retention' of the child within the meaning of Article 2(11) of that regulation. However, as has been set out in this Opinion in such a way that leaves, in my view, no room for doubt, that classification cannot be established. Therefore, there is no need to answer the third, fourth and fifth questions referred. Moreover, I note that confirmation of the existence of a judicial decision, referred to by the defendant in the main proceedings at the hearing, dismissing the appeal lodged by the father against the judgment of 29 April 2021 awarding sole custody of the common child to the mother is sufficient to close the debate before the referring court concerning the child's return to Sweden.

VI. Conclusion

In the light of the foregoing, I propose that the Court answer the questions referred for a preliminary ruling by the Korkein oikeus (Supreme Court, Finland) as follows:

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, such as that in the main proceedings, in which a child and its mother have gone to and remained in a Member State in application of a decision to transfer taken by the competent authority in the Member State of origin, in accordance with 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, cannot be considered wrongful removal or retention within the meaning of Article 2(11) of Regulation No 2201/2003 unless it is established that, under the guise of an application for international protection submitted for the child, the mother committed a wrongful act in order to circumvent the rules of international jurisdiction provided for by Regulation No 2201/2003, which it is for the referring court to determine in the light of the specific circumstances of the particular case.

ⁱ — ‘Points 1, 8, 27, 29, 39, 43, 47 and 52, as well as footnotes 18 and 33 of this text were amended after it was first published online.’