Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 November 2015*

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 23(a) — Grounds of non-recognition of judgments in matters of parental responsibility — Public policy)

In Case C-455/15 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varbergs tingsrätt (District Court, Varberg, Sweden), made by decision of 25 August 2015, received at the Court on 28 August 2015, in the proceedings

P

v

Q,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal (Rapporteur) and K. Jürimäe, Judges,

Advocate General: M. Wathelet,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 27 October 2015,

after considering the observations submitted on behalf of:

— P, by A. Heurlin, advokat, and M. Hellner,

— Q, by K. Gerbauskas and H. Mackevičius, advokatai,

— the Swedish Government, by A. Falk, U. Persson, C. Meyer-Seitz and L. Swedenborg, acting as Agents,

— the Spanish Government, by M. Sampol Pucurull, acting as Agent,

— the Lithuanian Government, by D. Kriaučiūnas and J. Nasutavičienė, acting as Agents,

* Language of the case: Swedish.

— the European Commission, by M. Wilderspin, acting as Agent, and S. Samuelsson and M. Johansson, advokater,

after hearing the Advocate General,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1), in particular Articles 23(a) and 24.

2 The request has been made in proceedings between P, resident in Sweden, and Q, resident in Lithuania, concerning rights of custody relating to their children.

Legal context

The 1980 Hague Convention

3 Article 13 of the Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980, ('the 1980 Hague Convention') provides:

'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.

…'

4 The 1980 Hague Convention entered into force on 1 December 1983. All Member States of the European Union are contracting parties to the convention.

EU law

5 Recital 21 in the preamble to Regulation No 2201/2003 states:

'The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.'

6 Article 8 of that regulation, ‘General jurisdiction’, provides in paragraph 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.’

7 Article 11 of the regulation, ‘Return of the child’, provides:

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

…

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.’

8 Under Article 15 of the regulation, ‘Transfer to a court better placed to hear the case’:

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

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

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

(a) upon application from a party; or

(b) of the court’s own motion; or

(c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

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

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

(a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

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

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

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

…'

9 Article 23 of the regulation, 'Grounds of non-recognition for judgments relating to parental responsibility', provides:

'A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

…'

10 Article 24 of the regulation, 'Prohibition of review of jurisdiction of the court of origin', provides:

'The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in … [Article] 23(a) may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.'

11 In accordance with Article 26 of the regulation, 'Non-review as to substance':

'Under no circumstances may a judgment be reviewed as to its substance.'

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

12 According to the order for reference, P and Q had together children V, born in 2000, and S, born in 2009. P and Q became a couple in 1997. They lived together until 2003, when they separated. The Šilutės rajono apylinkės teismas (District Court, Šilutė, Lithuania) granted them a divorce on 6 January 2003. In 2006 that court dissolved the contract on the legal effects of the marriage. Under that judgment V was to reside with her mother Q, but the rights of custody were shared between both parents. In the meantime, the family left Lithuania in 2005 to move to Sweden, where they were registered in the civil register in 2006. S was born in Sweden. Both children speak Swedish and attended school in Falkenberg (Sweden), where most of the people they know live.

13 On 27 November 2013 P discovered that Q and the two children had disappeared. It turned out that Q had contacted the social services of the municipality of Falkenberg, who started an investigation after Q claimed that she and the children were the victims of offences committed by P. The offences were reported to the police and Q and the children were placed in protected housing. Some months later, the preliminary investigation against P was dropped. He was, however, prohibited from having contact with Q and the children.

14 On 29 March 2014 Q took her two children to Lithuania. At that time the parents had shared rights of custody over both children. The children were registered on 31 March 2014 in the civil register of the municipality of Šilutė (Lithuania).

15 On 8 April 2014 Q brought proceedings against P in the Šilutės rajono apylinkės teismas (District Court, Šilutė), asking that court to make an interim order on the residence and custody of S and maintenance for both children.

16 On 11 April 2014 P brought proceedings against Q before the referring court, asking to be granted sole custody of the two children.

17 On the same date the Šilutės rajono apylinkės teismas (District Court, Šilutė) made an interim order that S should live with her mother.

18 In June 2014 P made an application to the Ministry of Foreign Affairs (Utrikesdepartementet) of the Kingdom of Sweden for the return of the children under the 1980 Hague Convention.

19 On 4 September 2014 the Vilniaus apygardos teismas (Regional Court, Vilnius) dismissed P's application for the return of the children, and on 21 October 2014 the Lietuvos apeliacinis teismas (Lithuanian Court of Appeal) upheld that decision, which was based on Article 13 of the 1980 Hague Convention.

20 On 18 October 2014, after a preparatory hearing in which Q did not take part, the referring court made an interim order granting P sole custody of S.

21 In the proceedings brought on 8 April 2014, the Šilutės rajono apylinkės teismas (District Court, Šilutė) by judgment of 18 February 2015 decided that S should live with Q and ordered P to pay maintenance for both children.

22 The referring court considers that its jurisdiction is based on Article 8(1) of Regulation No 2201/2003 since, at the time when proceedings were brought before the Šilutės rajono apylinkės teismas (District Court, Šilutė), 8 April 2014, and before itself, 11 April 2014, both children were habitually resident in Sweden within the meaning of that provision.

23 Before the referring court, P submits that, for that court to remain seised of the action in the main proceedings, the judgment delivered by the Šilutės rajono apylinkės teismas (District Court, Šilutė) on 18 February 2015 must not be recognised. The non-recognition should, in his view, be based on Article 23(a) of Regulation No 2201/2003.

24 P concedes that, in accordance with Article 24 of that regulation, there is a general prohibition of reviewing the jurisdiction of the court of the Member State of origin. He argues that that provision does not, however, refer to Article 15 of the regulation, on which the Šilutės rajono apylinkės teismas (District Court, Šilutė) based its jurisdiction. That court infringed Article 15, however, by assuming jurisdiction without being requested to do so by the referring court.

25 P further submits that the Šilutės rajono apylinkės teismas (District Court, Šilutė) deduced, moreover, from the fact that a Lithuanian court had refused to order the child's return on the basis of Article 13 of the 1980 Hague Convention that that child was still habitually resident in Lithuania.

26 While accepting that the public policy rule must be interpreted strictly, P submits that there is a certain margin where a serious error has been committed by the foreign court. In his view, the Šilutės rajono apylinkės teismas (District Court, Šilutė) committed such an error when, intentionally or unintentionally, it infringed not only Article 15 of Regulation No 2201/2203 but also the fundamental principle that, in cases of child abduction, it is ultimately for the courts of the child's original country of residence to decide.

27 Before the referring court, Q submits that Article 24 of that regulation prohibits review of the jurisdiction of the court of a Member State. The only case in which the judgment of the Šilutės rajono apylinkės teismas (District Court, Šilutė) of 18 February 2015 could be refused recognition would be if it were contrary to public policy. According to Q, that is not the case, since it is clear that P is not fulfilling his paternal obligations properly and that S must therefore remain with her mother. That has been found in four different proceedings. In addition, the children attend school in Lithuania, there is no risk to their health or development, and no rule of law has been broken. The Vilniaus apygardos teismas (Regional Court, Vilnius) and the Lietuvos apeliacinis teismas (Lithuanian Court of Appeal) held that the two children had been lawfully removed to Lithuania by their mother. The referring court has no reason to doubt the assessment made by those courts and the Lithuanian authorities.

28 Q also observes that until 18 February 2015 P took an active part in the proceedings before the Lithuanian courts. He also had procedural remedies available for appealing against the decisions made. Furthermore, he withdrew on his own initiative his application for V's residence to be established with him, and thereby accepted that V should live with her mother in Lithuania. Consequently, by seeking custody of S, P is infringing the rights and legitimate interests of both the children.

29 In those circumstances the Varbergs tingsrätt (District Court, Varberg) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Should the [referring court], in accordance with Article 23(a) of [Regulation No 2201/2003] or any other provision and notwithstanding Article 24 of that regulation, refuse to recognise the judgment of the [Šilutės rajono apylinkės teismas (District Court, Šilutė)] of 18 February 2015 … and consequently continue the proceedings in the custody case pending before the [referring court]?'

The urgent preliminary ruling procedure

30 The Varbergs tingsrätt (District Court, Varberg) asked for the present reference for a preliminary ruling to be dealt with under the urgent preliminary ruling procedure pursuant to Article 107 of the Rules of Procedure of the Court. It explains that, since S left with her mother on 29 March 2014, P has been unable to meet her. If the main proceedings were further extended, that would be contrary to that child's interests and affect her relationship with her father.

31 It must be found, first, that the present 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, so that the reference falls within the scope of the urgent preliminary ruling procedure defined in Article 107 of the Rules of Procedure.

32 It must be observed, secondly, that the present case concerns a six-year-old child who has been separated from her father for more than a year and that, according to the referring court, the father is no longer able to meet her. It follows that an extension of the present situation could seriously harm the future relationship between that child and her father.

33 In those circumstances, the Fourth Chamber of the Court has decided, on the basis of Article 108 of the Rules of Procedure, on the Judge-Rapporteur's proposal and after hearing the Advocate General, to grant the referring court's request that the present reference for a preliminary ruling should be dealt with under the urgent procedure.

Consideration of the question referred

34 By its question the referring court essentially asks whether Article 23(a) of Regulation No 2201/2003 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, that provision allows a court of a Member State which considers that it has jurisdiction to rule on the custody of a child to refuse to recognise a judgment of a court of another Member State which has ruled on the custody of that child.

35 It should be recalled that, as stated in recital 21 in its preamble, that regulation is founded on the idea that the recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.

36 In that system, Article 23 of Regulation No 2201/2003, which sets out the grounds on which recognition of a judgment in matters of parental responsibility may be refused, must be interpreted strictly, in so far as it is an obstacle to the attainment of one of the fundamental objectives of that regulation, as recalled in the preceding paragraph of this judgment.

37 While it is not for the Court to define the content of the public policy of a Member State, it is none the less required to review the limits within which the courts of a Member State may have recourse to that concept for the purpose of declining to recognise a judgment delivered in another Member State (see, by analogy, judgment in *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 42).

38 Moreover, in contrast to the public policy rule in Article 34(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), which was the subject of the judgment cited in the preceding paragraph, Article 23(a) of Regulation No 2201/2003 requires that a decision to refuse recognition must take into account the best interests of the child.

39 Recourse to the public policy rule in Article 23(a) of that regulation should thus come into consideration only where, taking into account the best interests of the child, recognition of the judgment given in another Member State would be at variance to an unacceptable degree with the legal order of the State in which recognition is sought, in that it would infringe a fundamental principle. In order to comply with the prohibition laid down in Article 26 of the regulation of any review of the substance of a judgment given in another Member State, the infringement would have to constitute a manifest breach, having regard to the best interests of the child, of a rule of law regarded as essential in the legal order of the State in which recognition is sought or of a right recognised as being fundamental within that legal order (see, by analogy, judgment in *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 44).

40 In the present case, however, the documents before the Court do not show the existence of such a rule of law, regarded as essential in the legal order of the Kingdom of Sweden, or of such a right, recognised as fundamental within that legal order, which would be infringed if the judgment of the Šilutės rajono apylinkės teismas (District Court, Šilutė) of 18 February 2015 were recognised.

41 However, P submits that that judgment should not be recognised, pursuant to Article 23(a) of Regulation No 2201/2003, since that court declared that it had jurisdiction contrary to Article 15 of that regulation.

42 On this point, it must be recalled that Article 24 of that regulation prohibits any review of the jurisdiction of the court of the Member State of origin, and even provides expressly that Article 23(a) of the regulation cannot be used to carry out such a review.

43 Admittedly, as P observes, Article 24 of Regulation No 2201/2003 refers only to Articles 3 to 14, not to Article 15 of the regulation.

44 However, it must be noted that Article 15 of Regulation No 2201/2003, which is in Chapter II of the regulation, entitled 'Jurisdiction', supplements the rules of jurisdiction in Articles 8 to 14 of that chapter by introducing a means of cooperation by which a court of a Member State which has jurisdiction to hear the case under one of those rules may, by way of exception, transfer it to a court of another Member State which is better placed to hear the case.

45 It follows that, as the Advocate General observes in point 72 of his view, an alleged breach of Article 15 of that regulation by a court of a Member State does not allow a court of another Member State to review the jurisdiction of that court, despite the fact that the prohibition in Article 24 of the regulation does not refer expressly to Article 15.

46 Moreover, it must be recalled that the court of the State in which recognition is sought cannot, without calling into question the purpose of Regulation No 2201/2003, refuse to recognise a judgment from another Member State solely on the ground that it considers that national or EU law was misapplied in that judgment.

47 P also submits that, unless the very principles underlying the system laid down by that regulation applicable to wrongful removals of children are to be infringed, it must be possible not to recognise that judgment.

48 In this respect, it must be observed that Regulation No 2201/2003 contains in Article 11 specific provisions relating to the return of a child who 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.

49 Moreover, that article provides in paragraph 8 for an autonomous procedure under which the possible problem of conflicting judgments in the matter may be resolved (see, to that effect, judgments in *Rinau*, C-195/08 PPU, EU:C:2008:406, paragraph 63, and *Povse*, C-211/10 PPU, EU:C:2010:400, paragraph 56).

50 So, even if a difficulty concerning the wrongful retention of a child were to arise in the case in the main proceedings, that difficulty would have to be resolved not by a refusal of recognition on the basis of Article 23(a) of Regulation No 2201/2003 of a judgment such as that of the Šilutės rajono apylinkės teismas (District Court, Šilutė) of 18 February 2015 but, if necessary, by recourse to the procedure laid down in Article 11 of that regulation.

51 That procedure enables the court of the Member State of habitual residence of the child before the wrongful removal or retention to deliver a subsequent judgment with a view to ensuring the return of the child to the Member State in which he was habitually resident immediately before his wrongful removal or retention.

52 It must, however, be recalled that, before making that judgment, the court which has jurisdiction must take into consideration the reasons for the decision of non-return and the evidence on which it is based (judgment in *Povse*, C-211/10 PPU, EU:C:2010:400, paragraph 59).

53 It follows from all the above considerations that the answer to the question is that Article 23(a) of Regulation No 2201/2003 must be interpreted as meaning that, in the absence of a manifest breach, having regard to the best interests of the child, of a rule of law regarded as essential in the legal order of a Member State or of a right recognised as being fundamental within that legal order, that provision does not allow a court of that Member State which considers that it has jurisdiction to rule on the custody of a child to refuse to recognise a judgment of a court of another Member State which has ruled on the custody of that child.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 23(a) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, in the absence of a manifest breach, having regard to the best interests of the child, of a rule of law regarded as essential in the legal order of a Member State or of a right recognised as being fundamental within that legal order, that provision does not allow a court of that Member State which considers that it has jurisdiction to rule on the custody of a child to refuse to recognise a judgment of a court of another Member State which has ruled on the custody of that child.

[Signatures]