Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

20 June 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Parental responsibility – Regulation (EC) No 2201/2003 – Articles 10 and 11 – Jurisdiction in cases of the wrongful removal of a child – Child's habitual residence in a Member State before the wrongful removal – Return procedure between a third country and a Member State – Concept of 'request for return' – The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction)

In Case C-35/23 [Greislzel],[1]

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany), made by decision of 16 January 2023, received at the Court on 25 January 2023, in the proceedings

Father

v

Mother,

Other parties to the proceedings:

Child L,

Lawyer,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin and L.S. Rossi (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 7 December 2023,

* Language of the case: German.

[1] The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

after considering the observations submitted on behalf of:

– the father, by A. Hamerak and T. von Plehwe, Rechtsanwälte,

– the German Government, by J. Möller, M. Hellmann, R. Kanitz and J. Simon, acting as Agents,

– the Polish Government, by B. Majczyna, M. Kozak and S. Żyrek, acting as Agents,

– the European Commission, by C. Vollrath and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 February 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 10 and 11 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

2 The request has been made in proceedings between a German national residing in Switzerland, the father of L, a minor child, and the child's mother, concerning parental responsibility over that child.

Legal context

The 1980 Hague Convention

3 As set out in the preamble to the Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980 ('the 1980 Hague Convention'), that convention seeks to 'protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access'.

4 The first paragraph of Article 6 of that convention provides:

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

5 The first paragraph of Article 8 of that convention states:

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

6 According to the first paragraph of Article 12 of the convention:

'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.'

7 Article 13 of the 1980 Hague Convention provides:

'Notwithstanding the provisions of the preceding [a]rticle, 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.

…'

8 Article 34 of the 1980 Hague Convention provides:

'… The present [c]onvention shall not restrict the application of an international instrument in force between the State of origin and the State addressed … for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.'

Regulation No 2201/2003

9 Recitals 12, 17 and 18 of Regulation No 2201/2003 are worded as follows:

'(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

…

(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the [1980 Hague Convention] would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or

retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

(18) Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it should inform the court having jurisdiction or central authority in the Member State where the child was habitually resident prior to the wrongful removal or retention. Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law.'

10 Article 2 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation:

…

7. the term "parental responsibility" shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

…

9. the term "rights of custody" shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

…

11. the term "wrongful removal or retention" shall mean a child's removal or retention where:
   (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

   and
   (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.'

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

12 Article 8 of that regulation, headed 'General jurisdiction', provides:

'1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.'

13 Article 10 of that regulation, headed 'Jurisdiction in cases of child abduction', provides:

'In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:
   (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;
   (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);
   (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);
   (iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.'

14 Article 11 of Regulation No 2201/2003, headed '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.'

15 Article 60 of that regulation, headed 'Relations with certain multilateral conventions', provides:

'In relations between Member States, this Regulation shall take precedence over the following [c]onventions in so far as they concern matters governed by this Regulation:

…

(e) the [1980 Hague Convention] …'.

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

16 L was born in Switzerland in November 2014 and has dual German and Polish nationality. Her father, a German national, has resided in Switzerland since June 2013 for professional reasons, while her mother, a Polish national, lived with her daughter from January 2015 to April 2016 in Frankfurt am Main (Germany), a city in which L's parents married.

17 From January 2015 to April 2016, the father regularly visited the mother and L in Germany.

18 In May 2015, the Swiss Migration Office accepted the application for family reunification made by the father, following which the mother obtained a temporary residence permit in Switzerland, valid until 31 December 2019.

19 On 9 April 2016, the mother and L moved to Poland. The mother then made a statement of departure for the whole family in Frankfurt am Main, indicating the father's address in Switzerland. In the summer of 2016, the mother applied for jobs in Switzerland. She has worked in Poland since November 2016.

20 Initially, the father visited his wife and daughter in Poland. However, from April 2017, the mother refused to allow the father his rights of access to their daughter. She enrolled her in a kindergarten in Poland, without the father's consent. In late May 2017, the mother informed the father that she intended to remain in Poland with their daughter.

21 On 7 July 2017, the father lodged an application for the return of the child to Switzerland through the Swiss Central Authority, namely the Federal Office of Justice in Berne, under the 1980 Hague Convention.

22 By decision of 8 December 2017, the Sąd Rejonowy dla Krakowa-Nowej Huty w Krakowie (District Court of Krakow-Nowa Huta in Krakow, Poland) dismissed that application on the ground that the father had given his consent for an indefinite period to the mother's move with their daughter to Poland. In addition, that court held that there was a grave risk to the best interests of the child, within the meaning of point (b) of the first paragraph of Article 13 of the 1980 Hague Convention, in the event of her return as the father had admitted to having once used violence against the mother.

23 The appeal brought by the father against that decision was dismissed by the Sąd Okręgowy w Krakowie (Regional Court, Krakow, Poland) by decision of 17 April 2018.

24 On 27 September 2017, the mother initiated divorce proceedings in Poland. In October 2017, she also made a statement of departure in respect of L to the municipality X in Switzerland.

25 By decision of 5 June 2018, the Sąd Okręgowy w Krakowie (Regional Court, Krakow) provisionally granted the mother custody of L and set the father's maintenance obligations. The referring court states that, in 2022, the father visited the child in Poland pursuant to a judicial decision taken in that Member State.

26 The father did not pursue a second application for the return of the child under the 1980 Hague Convention, which he had lodged on 29 June 2018 with the Bundesamt für Justiz (Federal Office of Justice) in Bonn (Germany).

27 By application of 12 July 2018, lodged with the Amtsgericht Frankfurt am Main (Local Court, Frankfurt am Main, Germany), the father applied for sole custody of the child, the right to determine the child's residence and the return of the child to his home in Switzerland, as soon as the judgment entered into force.

28 The father submitted that the child's parents had agreed, during 2015, that they would continue to live with L in Switzerland in the future. In April 2016, the mother decided to join her parents, for a limited period, in Poland. The father agreed to it, provided that that stay was limited to two or three years. It was agreed that the child should attend a kindergarten in Switzerland from November 2017 at the latest.

29 The mother opposed the application. She claims that the father consented to the move to Poland and provided assistance in the process of obtaining a Polish passport in that country. There had been, by contrast, no agreement on a time-limited move to Poland, just as there had been no agreement on a move to Switzerland.

30 By decision of 3 June 2019, the Amtsgericht Frankfurt am Main (Local Court, Frankfurt am Main) dismissed the father's application for the award of sole custody of the child, on the ground that that court did not have international jurisdiction to rule on the application.

31 The father brought an appeal against that decision before the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany) claiming, in essence, that the jurisdiction of the German courts derives from Article 11(6) of Regulation No 2201/2003, read in conjunction with paragraph 7 of that article, and from Article 10 of that regulation.

32 In that regard, the referring court notes, in the first place, that, on the date on which the father's application at first instance was lodged, namely 12 July 2018, L was habitually resident in Poland, with the result that the jurisdiction of the German courts cannot be based on Article 8(1) of Regulation No 2201/2003.

33 In the second place, as regards the jurisdiction of those courts which, according to the father, derives from Articles 10 and 11 of Regulation No 2201/2003, the referring court takes the view that those articles must be interpreted together and points out that those articles apply only in relations between Member States. That is why, in the return proceedings initiated at the father's request on 7 July 2017 through the Federal Office of Justice in Berne, which sought the return of the child to Switzerland, the requirements arising from Article 11 of Regulation No 2201/2003, relating to the implementation of procedures under the 1980 Hague Convention, do not apply, since the Swiss Confederation is not bound by Regulation No 2201/2003.

34 Consequently, according to the referring court, following the refusal of the application for return, the Polish court had no reason to proceed in accordance with Article 11(6) and (7) of that regulation and to inform the German courts or central authority of the order on non-return. The referring court adds that the second application for return, which the father lodged with the Federal Office of Justice in Bonn shortly before the lodging of his application for sole custody giving rise to the present proceedings, cannot serve as a basis for continuing to have jurisdiction under Article 10 of that regulation, since the father did not pursue that application for return.

35 In the third place, the referring court considers that, in so far as Article 10 of Regulation No 2201/2003 is applicable in the present case, the conditions for the application of Article 10(b)(i) of that regulation, which provides that the courts of the Member State in which the child was habitually resident immediately before the wrongful removal or retention will retain jurisdiction, are not, in principle, satisfied. Although the father claims that the child was wrongfully removed to Poland in May 2017, his application for rights of custody was not made until 12 July 2018, with the result that the period of one year laid down in Article 10(b)(i) of that regulation was not observed. That period could, however, be complied with if it began to run on the date on which that child, according to her father, had to attend a kindergarten in Switzerland, namely from November 2017.

36 The referring court notes, however, that the account of the facts given by the father in that regard in the present proceedings differs from that which he presented during the proceedings under the 1980 Hague Convention. The question therefore arises as to whether the father is time-barred from submitting new facts as to the exact date of the wrongful removal and whether the rules on the burden of proof applicable in proceedings under that convention can be transposed to the present proceedings. The referring court is inclined to take the view that it is not bound by the decision on the application for return made under that convention and that it must assess the contradictions in the father's account of the facts.

37 Finally, in the fourth place, the referring court observes that, in the event of a refusal to return the child under Article 13 of the 1980 Hague Convention, the rules of Article 11(6) to (8) of Regulation No 2201/2003 encourage proceedings relating to the custody of the child to be brought before the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention. However, contrary to the father's submissions, the referring court is of the opinion that the application of the provisions of Article 11 necessarily presupposes the implementation of a procedure under the 1980 Hague Convention between two Member States bound by Regulation No 2201/2003, which is not the case here.

38 In those circumstances, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'To what extent is the regulatory mechanism provided for in [Articles 10 and 11] of [Regulation No 2201/2003] limited to proceedings conducted in the context of relations between EU Member States?

More specifically:

(1) Does Article 10 of [Regulation No 2201/2003] apply, with the effect that the jurisdiction of the courts in the former [Member] State of residence is retained, if the child had his or her habitual residence in an EU Member State (Germany) before his or her removal and the return proceedings under the [1980 Hague Convention] were conducted between an EU Member State (Poland) and a third State (Switzerland) and, in those proceedings, the return of the child was refused?

If Question 1 is answered in the affirmative:

(2) In the context of Article 10(b)(i) of [Regulation No 2201/2003], what requirements are to be imposed for the purposes of establishing continuing jurisdiction [of the courts of the Member State of the former habitual residence of the child]?

(3) Does Article 11(6) to (8) of [Regulation No 2201/2003] also apply in the case of return proceedings implemented under the [1980 Hague Convention] in the context of relations between a third State and an EU Member State, as a State [to which the child has been removed], in so far as the child had his or her habitual residence in another EU Member State before the removal?'

Consideration of the questions referred

The first question

39 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court of Justice should, where necessary, reformulate the questions referred to it (judgment of 30 January 2024, *Direktor na Glavna direktsia 'Natsionalna politsia' pri MVR – Sofia*, C-118/22, EU:C:2024:97, paragraph 31 and the case-law cited).

40 In the present case, the first question arises from the fact that, according to the referring court, the application of Article 10 of Regulation No 2201/2003 is conditional on proceedings for the return of the child having been commenced under the 1980 Hague Convention, between two Member States, as supplemented by the provisions of Article 11 of that regulation. In so far as the father, before the dispute in the present case, initiated proceedings for the return of the child through the Central Authority of the Swiss Confederation, a third country which, it is common ground, is not bound by Regulation No 2201/2003, the referring court takes the view that neither the provisions of Article 11 nor, consequently, those of Article 10 thereof are applicable in the main proceedings.

41 In such circumstances, the referring court has doubts as to whether the German courts retain jurisdiction as courts of the Member State of habitual residence of the child immediately before the wrongful removal or retention.

42 It follows that, by its first question, the referring court seeks, in essence, to ascertain whether Article 10(b)(i) of Regulation No 2201/2003 must be interpreted as meaning that that provision ceases to be applicable on the sole ground that a request was made to the central authority of a third country for proceedings to be commenced for the return of the child under the 1980 Hague Convention and that those proceedings have failed.

43 Without calling into question the admissibility of that question, the Polish Government submits that Article 10 is not applicable to the dispute in the main proceedings in so far as a Polish court has dismissed the application made by L's father seeking an order for the return of his child, pursuant to the 1980 Hague Convention, finding that there had been no wrongful removal or retention of that child.

44 In that regard, it is sufficient to note that, as is confirmed by Article 11(8) of Regulation No 2201/2003, the decision of a court of a Member State refusing to grant an application for return under the 1980 Hague Convention does not preclude a court of another Member State from assuming jurisdiction on the basis of Article 10 of that regulation.

45 In the light of that clarification, it should be noted that under Article 8(1) of Regulation No 2201/2003, general jurisdiction in matters of parental responsibility is conferred on the courts of the Member State in which the child is habitually resident at the time the court is seised. Because of their geographical proximity, those courts are generally the best placed to assess the measures to be taken in the interests of the child (judgment of 14 July 2022, *CC (Transfer of a child's habitual residence to a third country)*, C-572/21, EU:C:2022:562, paragraph 27 and the case-law cited).

46 However, in accordance with Article 8(2) of that regulation, that general jurisdiction is to apply 'subject to the provisions of Articles 9, 10 and 12' of that regulation.

47 Article 10 of Regulation No 2201/2003 provides that the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention are to retain their jurisdiction until the child has acquired a habitual residence in another Member State.

48 The transfer of jurisdiction to the courts of that other Member State is subject to the condition, set out in Article 10(a) of that regulation, that a person with custody rights has given his or her consent to that removal or retention, or to the conditions set out in Article 10(b) thereof. In accordance with that paragraph (b), it is required, first, that the child has resided in that Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child, second, that the child is settled in his or her new environment and, third, that one of the four other conditions set out in paragraphs (i) to (iv) of that provision is met. The condition laid down in paragraph (i) of that provision provides that, within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, 'no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained'.

49 Furthermore, it must be borne in mind that, under Article 11(1) of Regulation No 2201/2003, where a person 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 of Article 11 are to apply.

50 It is clear from the wording of that Article 11 that that provision applies only where proceedings have been initiated between Member States under the 1980 Hague Convention for the return of a child who has been wrongfully removed or retained.

51 However, there is nothing in the wording or in the scheme of Article 10 of that regulation or in the objectives pursued by it to support the argument that the rule of special jurisdiction laid down in Article 10 consisting, in principle, in maintaining the jurisdiction of the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention becomes inapplicable on the ground that return proceedings have been unsuccessfully initiated under the 1980 Hague Convention between the central or judicial authorities of a third country and a Member State.

52 In the first place, it must be recalled that the rule on jurisdiction laid down in Article 10 of Regulation No 2201/2003 is based on 'the wrongful removal or retention of a child', understood as, in accordance with Article 2(11) of that regulation, a removal or retention in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention, provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention (see, to that effect, judgment of 2 August 2021, *A*, C-262/21 PPU, EU:C:2021:640, paragraph 44).

53 That definition of the wrongful removal or retention of a child thus merely refers to an infringement of the rights of custody of one of the holders of parental responsibility under the law of the Member State of the child's habitual residence immediately before that removal or retention. It does not therefore depend on the holder of rights of custody initiating proceedings, which, as the case may be, would have to take place subsequently, for the return of the child under the 1980 Hague Convention.

54 Such an interpretation is supported by the objective pursued by Article 10 of Regulation No 2201/2003, which is to avoid giving a procedural advantage to the perpetrator of the wrongful abduction of the child which would result from the fact that the courts of the Member State in which that child was habitually resident immediately before that abduction would automatically lose their jurisdiction on the sole ground that that child is now habitually resident with the perpetrator of that abduction in another Member State (see, to that effect, judgment of 13 July 2023, *TT (Wrongful removal of a child)*, C-87/22, EU:C:2023:571, paragraph 36 and the case-law cited).

55 In the second place, while Article 10(b) refers to the absence of any request for return to the competent authorities of the Member State on whose territory the child has been wrongfully removed or retained, in order to terminate the jurisdiction of the courts of the child's former

habitual residence, that provision does not specify that such a request must have been made under the 1980 Hague Convention, nor does it exclude that it could have been made through a central authority of a third country.

56 By contrast, the premiss on which the referring court relies would amount to requiring the holder of parental responsibility, whose rights of custody have been infringed within the meaning of Article 2(11) of that regulation, to rely on the provisions of the 1980 Hague Convention in order to request the return of the child concerned.

57 It must be borne in mind that, first, in accordance with Article 60 of Regulation No 2201/2003, those provisions do not take precedence over the provisions of the regulation in relations between Member States in matters governed by it (see, to that effect, judgment of 13 July 2023, *TT (Wrongful removal of a child)*, C-87/22, EU:C:2023:571, paragraph 58).

58 Second, the claim that there was an obligation to rely on the provisions of the 1980 Hague Convention in order to apply for the return of a child subject to international abduction has already been rejected by the Court in the judgment of 19 September 2018, *C.E. and N.E.* (C-325/18 PPU and C-375/18 PPU, EU:C:2018:739, paragraphs 49 and 51). As is apparent from Article 34 of that convention, a return procedure may be based on other rules or other provisions of international agreements, in particular, bilateral provisions. In that regard, the Court has also stated in paragraph 53 of that judgment that the holder of parental responsibility may apply for the recognition and enforcement, in accordance with the provisions of Chapter III of Regulation No 2201/2003, of a decision relating to parental authority and the return of children that has been made by a court having jurisdiction under Chapter II, Section 2, of that regulation, even if that holder of parental responsibility has not submitted an application for return under the 1980 Hague Convention.

59 Accordingly, the mere fact that the parent whose right of custody has been infringed has unsuccessfully initiated proceedings under the 1980 Hague Convention for the return of the child wrongfully removed or retained through the central authority of a third country, and subsequently transmitted to the competent authorities of a Member State, has no bearing on the application to such a situation of the rules on jurisdiction laid down in Article 10 of Regulation No 2201/2003.

60 In the third place, contrary to what the referring court maintains, the judgment of 24 March 2021, *MCP* (C-603/20 PPU, EU:C:2021:231), by which the Court held that Article 10 of that regulation does not apply to a situation in which a child has acquired, on the date on which the application relating to parental responsibility was lodged, his or her habitual residence in a third country following abduction to that country, is irrelevant to the foregoing interpretation. It is common ground in the main proceedings that the allegedly wrongful removal took place between two Member States, a situation which does indeed fall within the scope of that provision.

61 Finally, in the fourth place, contrary to what the German Government claims, it cannot be accepted, given that Regulation No 2201/2003 is silent on the matter, that the application of the rule on jurisdiction in matters of parental responsibility, laid down in Article 10 of that regulation, is subject to the application of procedural rules, such as those set out in Article 11(6) and (7) of that regulation, the main purpose of which is to govern the transmission of information on a judgment of non-return, adopted pursuant to Article 13 of the 1980 Hague Convention, which must be communicated to the court with jurisdiction in the Member State

where the child was habitually resident immediately before the wrongful removal or retention and to determine the arrangements for service of that information (see, to that effect, judgment of 9 January 2015, *RG*, C-498/14 PPU, EU:C:2015:3, paragraph 46).

62 In the light of those considerations, the answer to the first question is that Article 10(b)(i) of Regulation No 2201/2003 must be interpreted as meaning that that provision does not cease to be applicable on the sole ground that a request was made to the central authority of a third country for proceedings to be commenced for the return of a child under the 1980 Hague Convention and that those proceedings have failed.

The second question

63 By its second question, the referring court asks, in general terms, what conditions must be satisfied in order to establish that the courts of the Member State in which the child was habitually resident immediately before the wrongful removal or retention continue to have jurisdiction.

64 It is apparent from the statement of reasons and the factual circumstances set out in the request for a preliminary ruling that that question concerns specifically two points relating, in particular, to the concept of a 'request for return', as referred to in Article 10(b)(i) of that regulation. First, the referring court takes the view that the application for return lodged by L's father on 7 July 2017 does not constitute a 'request for return' within the meaning of Article 10(b)(i) on the ground that it sought to obtain the return of the child to a third country, namely the Swiss Confederation. Second, that court considers that the application for custody made by the father on 12 July 2018 may be treated in the same way as a 'request for return' within the meaning of Article 10(b)(i). It notes, however, that should the *dies a quo* of that period be identical to the one applicable in the context of the request for return lodged on 7 July 2017, as per the father's claims, that request was made after the one-year period laid down by that provision. In that context, the referring court also asks whether the holder of rights of custody is entitled to adduce new evidence in relation to that which he or she has put forward in the context of those proceedings and, in that regard, what the rules are in relation to the burden of proof.

65 In the light of those clarifications and of the Court's case-law referred to in paragraph 39 of the present judgment, it is necessary to reformulate the second question with the result that the referring court asks, in essence, whether Article 10(b)(i) of Regulation No 2201/2003 must be interpreted as meaning that the concept of a 'request for return', within the meaning of that provision, covers an application request for the return of the child to a State other than the Member State in which the child was habitually resident immediately before the wrongful removal or retention or an application for custody of that child brought before the courts of that Member State. If the answer is in the affirmative, the referring court asks, first, whether, in order to establish that the holder of rights of custody has lodged a request for return within the period laid down by that provision, that holder is entitled to adduce new evidence in relation to the evidence which he or she submitted in the course of the proceedings conducted under the 1980 Hague Convention and, second, whether the rules on the burden of proof are identical to those applicable in those proceedings.

66 As regards, in the first place, the question whether, as argued in particular by the Commission, a request for return of the child to a State, including to a third country, distinct from the Member State where that child was habitually resident immediately before the wrongful removal or retention falls within Article 10(b)(i) of Regulation No 2201/2003, it should be noted, first of all, that that regulation does not specify what is to be understood by 'request for return'.

67 According to settled case-law, in interpreting a provision of EU law, it is appropriate to consider not only its wording but also its context and the objectives pursued by the legislation of which it forms part (see, to that effect, judgment of 13 July 2023, *TT (Wrongful removal of a child)*, C-87/22, EU:C:2023:571, paragraph 39 and the case-law cited).

68 In that regard, first, there is nothing in the wording of Article 10 of Regulation No 2201/2003 to suggest that the expression 'request for return' refers to an action other than that by which a person seeks the return of a child to the Member State on whose territory he or she was habitually resident immediately before the wrongful removal or retention.

69 Next, as regards the context of Article 10 of that regulation, it should be borne in mind that that article lays down a special rule on jurisdiction in relation to the general rule laid down in Article 8(1) of that regulation. Article 10 thus sets out the circumstances in which jurisdiction in favour of the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention continues or, on the contrary, is transferred to the courts of the Member State where the child has acquired habitual residence following the wrongful removal or retention.

70 It is therefore logical and consistent with the scheme of the rules of jurisdiction in matters of parental responsibility laid down in Regulation No 2201/2003 that, first, the 'request for return', referred to in Article 10 of that regulation, must be made to the competent authorities of the Member State in whose territory the child has been wrongfully removed and is physically present and, second, that same request seeks to obtain the return of that child to the Member State in whose territory the child was habitually resident immediately before the wrongful removal, and whose courts are, as the Court has already held, on account of their geographical proximity, generally best placed to assess the measures to be taken in the interests of that child (see, to that effect, judgment of 13 July 2023, *TT (Wrongful removal of a child)*, C-87/22, EU:C:2023:571, paragraph 33 and the case-law cited). A request for the child to be taken to another State, which is, moreover, a third country, in whose territory the child was not habitually resident before the wrongful removal, goes against that logic.

71 Lastly, that interpretation is supported by the objective of Regulation No 2201/2003. That regulation seeks to deter child abductions between States and, in cases of abduction, obtain the child's prompt return to the State of his or her habitual residence (judgment of 19 September 2018, *C.E. and N.E.*, C-325/18 PPU and C-375/18 PPU, EU:C:2018:739, paragraph 47).

72 Furthermore, the Court has already held, with regard to the interpretation of Article 11 of Regulation No 2201/2003, that one of the objectives of that provision is the restoration of the *status quo ante*, that is to say, the situation that existed prior to the wrongful removal or retention of the child (see, to that effect, judgment of 16 February 2023, *Rzecznik Praw Dziecka and Others (Suspension of the return decision)*, C-638/22 PPU, EU:C:2023:103, paragraph 69 and the case-law cited).

73 Even if, as has been held in paragraphs 51 to 62 of the present judgment, the jurisdiction established by Article 10 of Regulation No 2201/2003 is not conditional on the initiation of return proceedings under the 1980 Hague Convention, as supplemented, as between the Member States, by the provisions of Article 11 of that regulation, the fact remains that the restoration of *the status quo ante* necessarily constitutes a common objective of the requests for return referred to in Articles 10 and 11 of that regulation.

74 Accordingly, all those objectives would be undermined if a 'request for return' were to be understood as an application to transfer the child to a State in whose territory that child was not habitually resident immediately before the wrongful removal or retention (see, to that effect, judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 38).

75 That interpretation is supported by the 1980 Hague Convention. Although it is true, as the Commission submits, that the first paragraph of Article 8 of that convention authorises the holder of rights of custody to make an application for return through the Central Authority of any Contracting Party, the preamble to that convention nevertheless states that the convention is intended to protect children internationally against the harmful effects of wrongful removal or retention and to establish procedures to ensure the prompt return of the child to the State of his or her habitual residence (see, to that effect, judgment of 16 February 2023, *Rzecznik Praw Dziecka and Others (Suspension of the return decision)*, C-638/22 PPU, EU:C:2023:103, paragraph 64).

76 It thus follows from the literal, contextual and teleological interpretation of Article 10(b)(i) of Regulation No 2201/2003 that the concept of a 'request for return', within the meaning of that provision, refers to an application by which a person requests that a child return to the Member State in whose territory he or she was habitually resident immediately before the wrongful removal or retention.

77 Conversely, an application for the child to join one of his or her parents in a third country where that child was not habitually resident immediately before the child was wrongfully removed does not constitute a 'request for return' within the meaning of Article 10(b)(i).

78 In the second place, an application for custody before the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention cannot be regarded as equivalent to a request for return within the meaning of Article 10(b)(i) of Regulation No 2201/2003.

79 As the Advocate General observed, in essence, in point 61 of his Opinion, it is apparent from Article 10(b) of that regulation that a request for the return of a child and an application for custody of a child are not interchangeable, since those two applications have different functions. First, unlike an application for custody of a child, which requires an in-depth examination of the substance of the dispute in matters of parental responsibility, a request for return is, by its nature, the subject of an expedited procedure, since it seeks to ensure, as stated in recital 17 of Regulation No 2201/2003, the return of the child without delay (see, to that effect, judgment of 16 February 2023, *Rzecznik Praw Dziecka and Others (Suspension of the return decision)*, C-638/22 PPU, EU:C:2023:103, paragraphs 68 and 70). Second, the Court has already held that a decision on the return or the non-return of the child does not settle the issue of rights of custody with respect to that child, it being understood that a failure to succeed in a return procedure is without prejudice to the possibility, for the parent whose rights of custody have been infringed, of asserting his or her rights on the substance of parental responsibility by means of proceedings

before the courts with the relevant jurisdiction under the provisions of Regulation No 2201/2003 (see, to that effect, judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 65 and the case-law cited).

80 Since neither an application for the return of a child to a State in whose territory that child was not habitually resident immediately before the wrongful removal or retention nor an application for custody made in respect of that child can be classified as 'request(s) for return' within the meaning of Article 10(b)(i) of Regulation No 2201/2003, there is no need to examine the questions referred to in the last sentence of paragraph 65 above.

81 In the light of the foregoing considerations, the answer to the second question is that Article 10(b)(i) of Regulation No 2201/2003 must be interpreted as meaning that the concept of 'request for return' within the meaning of that provision does not cover either an application for the return of the child to a State other than the Member State in which that child was habitually resident immediately before the wrongful removal or retention, or an application for custody of that child brought before the courts of that Member State.

The third question

82 By its third question, the referring court asks, in essence, whether Article 11(6) to (8) of Regulation No 2201/2003 must be interpreted as meaning that that provision applies where proceedings for the return of a child under the 1980 Hague Convention have commenced between a third country and a Member State on whose territory that child is present following a wrongful removal or retention, in so far as the child was habitually resident in another Member State before being removed.

83 As has been stated in paragraph 50 of the present judgment, it follows from the wording of Article 11 of that regulation that it applies only in conjunction with the provisions of the 1980 Hague Convention in relations between the Member States.

84 It follows that, as the German and Polish Governments and the Commission have rightly submitted, the obligations to inform and notify laid down in Article 11(6) and (7) of that regulation and the enforceability of the judgment referred to in Article 11(8) of that regulation do not apply in the context of proceedings for the return of the child which have commenced between a central authority of a third country and the authorities of the Member State in which that child is present following a wrongful removal or retention.

85 In the light of those considerations, the answer to the third question is that Article 11(6) to (8) of Regulation No 2201/2003 must be interpreted as not applying when proceedings for the return of a child under the 1980 Hague Convention have commenced between a third country and a Member State on the territory of which that child is present following a wrongful removal or retention.

Costs

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

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

1. **Article 10(b)(i) 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 that provision does not cease to be applicable on the sole ground that a request was made to the central authority of a third country for proceedings to be commenced for the return of a child under the Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980, and that those proceedings have failed.

2. **Article 10(b)(i) of Regulation No 2201/2003**

   must be interpreted as meaning that the concept of 'request for return' within the meaning of that provision does not cover either an application for the return of the child to a State other than the Member State in which that child was habitually resident immediately before the wrongful removal or retention, or an application for custody of that child brought before the courts of that Member State.

3. **Article 11(6) to (8) of Regulation No 2201/2003**

   must be interpreted as not applying when proceedings for the return of a child under the Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980 have commenced between a third country and a Member State on the territory of which that child is present following a wrongful removal or retention.

[Signatures]