Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

31 May 2018 *

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Scope — Concept of 'rights of access' — Article 1(2)(a) and Article 2.7 and 2.10 — Rights of access of grandparents)

In Case C-335/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), made by decision of 29 May 2017, received at the Court on 6 June 2017, in the proceedings

Neli Valcheva

v

Georgios Babanarakis

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, C.G. Fernlund (Rapporteur), J.-C. Bonichot, A. Arabadjiev and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– the Czech Government, by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

– the European Commission, by Y.G. Marinova and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 April 2018,

gives the following

* Language of the case: Bulgarian.

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).

2 The request has been made in proceedings between Ms Neli Valcheva, residing in Bulgaria, and her former son-in-law, Mr Georgios Babanarakis, residing in Greece, concerning Ms Valcheva's rights of access to her grandson.

Legal context

EU law

3 Recitals 2, 5 and 12 of Regulation No 2201/2003 state:

'(2) The Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area, and identified visiting rights as a priority.

…

(5) 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.

…

(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. ...'

4 Article 1 of that regulation, entitled 'Scope', provides:

'1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(a) divorce, legal separation or marriage annulment;

(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;

…'

5 Article 2 of that directive, entitled 'Definitions', provides in points 1 and 7 to 10:

'For the purposes of this Regulation:

1. the term "court" shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;

…

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;

8. the term "holder of parental responsibility" shall mean any person having parental responsibility over a child;

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;

10. the term "rights of access" shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time.'

6 Article 8 of the regulation, entitled '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.'

Bulgarian law

7 Article 128 of the Semeen kodeks (Family Code), in the version published in *Darzhaven vestnik* No 74 of 20 September 2016 ('the Family Code'), provides, concerning the 'rights of access of family members':

'(1) The grandfather and the grandmother may apply to the Rayonen sad (District Court) at the place where the child currently resides for determination of measures governing their rights of access, if this is in the child's interests. The child shall also have the right to make such application.

(2) The court shall accordingly apply Article 59(8) and (9).

(3) If the parent to whom the judge has granted rights of access is temporarily unable to exercise them because of absence or illness, those rights may be exercised by the child's grandmother and grandfather.'

8 Article 59 of the Family Code provides:

'(1) In the event of divorce, the spouses shall make decisions by mutual agreement on the custody and upbringing of minors from the marriage, in the interest of those minors. The court shall validate the agreement pursuant to Article 49(5).

(2) If the spouses fail to reach the agreement referred to in paragraph 1, the court shall decide of its own motion with which parent the children will live and to which parent custody is awarded and shall prescribe measures relating to the exercise of that right and determine the arrangements for the parents' rights of access and maintenance obligations.

…

(7) By way of exception, if the interests of the children so require, the court can make an order for them to live with their grandfather or grandmother or with the family of other relations or relatives, with their agreement. If this should not be possible, the child shall be placed with a foster family or in a specialised establishment, designated by the Social Services Directorate, or in a residential care centre. At all events, the court shall make the appropriate arrangements for the parents' rights of access to the child.

(8) In so far as necessary, the court shall order appropriate protective measures in order to secure implementation of the decision under paragraphs 2 and 7 hereof, such as:

1. exercise of rights of access in the presence of a specified person;

2. exercise of rights of access at a specified place;

3. responsibility for the child's travel expenses and, where necessary, the travelling expenses of an accompanying person.

(9) If there is a change of circumstances, the court may, upon application by a parent or by the Social Services Directorate or of its own motion, amend the measures previously ordered and order new measures.'

9 Article 4 of the Zakon za litsata i semeystvoto (Law on persons and the family), in the version published in *Darzhaven vestnik* No 120 of 29 December 2002, provides:

'Persons over the age of 14 but under the age of 18 are adolescent minors.

They require the consent of their parents or guardians to perform legal acts but may undertake small everyday transactions to satisfy their personal needs and have a right to dispose of their earnings from employment.'

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

10 Ms Valcheva is the grandmother of Christos Babanarakis, born on 8 April 2002 from the marriage of Ms Mariana Koleva, Ms Valcheva's daughter, and Mr Georgios Babanarakis. That marriage was dissolved by a Greek court, which awarded custody of Christos Babanarakis to his father. That court determined the arrangements for the exercise by the mother of her rights of access to the child, including contact by internet and telephone as well as personal meetings in Greece for a few hours once a month.

11 After having argued that she was unable to maintain quality contact with her grandson and that she had unsuccessfully sought the support of the Greek authorities, Ms Valcheva applied to a Bulgarian court of first instance, on the basis of Article 128 of the Family Code, for a determination of arrangements for her to exercise rights of access to her minor grandson. She requested that she be allowed to see him regularly on certain weekends of each month and that he stay at her home for one or two weeks during his holidays, twice a year.

12 That court of first instance took the view that it did not have jurisdiction to examine Ms Valcheva's application. The appeal court hearing Ms Valcheva's appeal upheld the decision adopted at first instance, on the basis of Regulation No 2201/2003. It found that that regulation applied to cases concerning rights of access to a child by a wide family circle including the child's grandparents and that, according to Article 8 of that regulation, jurisdiction to examine the application lay with the courts of the Member State in which the child was habitually resident at the time when the court was seised, that is to say, the Greek courts.

13 Ms Valcheva lodged an appeal on a point of law before the referring court. That court states that it shares, essentially, the position of the appeal court, but adds that, in order to determine the court having jurisdiction, it is necessary for it to ascertain whether Regulation No 2201/2003 applies to the rights of access of grandparents.

14 In those circumstances, the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the concept of "rights of access" used in Article 1(2)(a) and Article 2.10 of Regulation No 2201/2003 to be interpreted as encompassing not only access between the parents and the child but also the child's access to relatives other than the parents, that is to say the grandparents?'

Consideration of the question referred

15 By its question, the referring court seeks to determine whether rights of access of grandparents to their grandchild come within the scope of Regulation No 2201/2003, in order to determine whether the court having jurisdiction to rule on an application, such as that made by Ms Valcheva concerning those rights of access, has to be determined on the basis of that regulation or on the basis of the rules of private international law.

16 In the first situation envisaged, the courts having jurisdiction are, as a general rule and in accordance with Article 8 of Regulation No 2201/2003, those of the Member State in which the child is habitually resident at the time when the court is seised. In the present case, in the light of the information in the order for reference, the Greek courts would have jurisdiction.

17 In the second situation envisaged, the national courts, in the present case the Bulgarian courts, would have to ascertain whether they have jurisdiction in the light of the rules of private international law.

18 Regulation No 2201/2003 does not specify whether the concept of 'rights of access', defined in Article 2.10, includes the rights of access of grandparents.

19 That concept must be interpreted autonomously, taking account of the wording, scheme and objectives of Regulation No 2201/2003, in the light, in particular, of the *travaux préparatoires* for that regulation, as well as of other acts of EU and international law.

20 With regard to the wording of Article 2.10 of Regulation No 2201/2003, it must be noted that 'rights of access' are defined broadly, encompassing in particular the right to take a child to a place other than that child's habitual residence for a limited period of time.

21 That definition does not impose any limitation in regard to the persons who may benefit from those rights of access.

22 In order to determine whether grandparents are included among the persons who come within that definition, account should be taken of the scope of Regulation No 2201/2003, as set out in Article 1(1)(b) thereof, under which the regulation applies to the attribution, exercise, delegation, restriction or termination of parental responsibility.

23 Moreover, the concept of rights of access appears, in particular, in Article 1(2)(a) and in Article 2.7 of Regulation No 2201/2003.

24 Article 1(2)(a) of the regulation specifies that matters relating to parental responsibility may, in particular, deal with rights of custody and rights of access.

25 Article 2.7 of that regulation defines the concept of parental responsibility as meaning 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, which includes rights of custody and rights of access.

26 It must be noted, in the light of those provisions, that Regulation No 2201/2003 does not expressly exclude a request made by grandparents for rights of access to their grandchildren from coming within the scope of that regulation.

27 It is also important to take account of the objective pursued by Regulation No 2201/2003.

28 As is apparent from the preamble to that regulation, its purpose is to create a judicial area based on the principle of mutual recognition of judicial decisions through the establishment of rules governing jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility.

29 According to recital 5 of the regulation, it covers 'all' decisions on parental responsibility.

30 Among these, decisions on visiting rights are identified as a priority, according to recital 2 of the regulation.

31 It is apparent from the Commission working document on mutual recognition of decisions on parental responsibility (COM(2001) 166 final) of 27 March 2001 that the EU legislature asked itself who may exercise parental responsibility or be granted rights of access. It considered several options, in particular limiting the persons concerned to one of the parents of the child and, conversely, imposing no limitations to specific persons whatsoever. The document mentions, among others, grandparents, referring to the draft European Council Convention on Contact concerning Children, which recognises the right of a child to contact not only with his or her parents but also with other persons with whom the child has family ties, such as grandparents. The EU legislature ultimately chose not to provide for a limitation of the range of persons who may exercise parental responsibility or hold rights of access.

32 As noted by the Advocate General in point 65 of his Opinion, it is clear, in the light of the *travaux préparatoires* for Regulation No 2201/2003, that the EU legislature intended to extend the scope of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (OJ 2000 L 160, p. 19), which was limited to disputes concerning parents, and that it contemplated all decisions concerning parental responsibility and therefore concerning rights of access, irrespective of the nature of the persons who may exercise those rights and without excluding grandparents.

33 It follows from that analysis that the concept of rights of access referred to in Article 1(2)(a) and in Article 2.7 and 2.10 of Regulation No 2201/2003 must be understood as referring not only to the rights of access of parents to their child, but also to the rights of access of other persons with whom it is important for the child to maintain a personal relationship, among others, that child's grandparents, whether or not they are holders of parental responsibility.

34 It follows that an application made by grandparents to be granted rights of access to their grandchildren is covered by Article 1(1)(b) of Regulation No 2201/2003 and therefore comes within the scope of that regulation.

35 It should also be pointed out that, if rights of access did not concern all of those persons, questions relating to those rights could be determined not only by the court designated in accordance with Regulation No 2201/2003 but also by other courts which might consider themselves to have jurisdiction on the basis of private international law. There would be a risk that conflicting or even irreconcilable decisions might be adopted, as the rights of access granted to a relative of the child could adversely affect the rights of access granted to a holder of parental responsibility.

36 As observed by the Advocate General in point 56 of his Opinion, the granting of rights of access to a person other than the parents could interfere with the rights and duties of those parents, namely, in the present case, the father's rights of custody and the mother's rights of access. Consequently, it is important, in order to avoid the adoption of conflicting measures and in the best interests of the child, that the same court — that is to say, as a rule, the court of the child's habitual residence — should rule on rights of access.

37 In the light of all of the foregoing considerations, the answer to the question referred is that the concept of 'rights of access' referred to in Article 1(2)(a) and in Article 2.7 and 2.10 of Regulation No 2201/2003 must be interpreted as including rights of access of grandparents to their grandchildren.

Costs

38 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 (First Chamber) hereby rules:

The concept of 'rights of access' referred to in Article 1(2)(a) and in Article 2.7 and 2.10 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as including rights of access of grandparents to their grandchildren.

[Signatures]