JUDGMENT OF THE COURT (Third Chamber)

2 April 2009 *

In Case C-523/07,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Korkein hallinto-oikeus (Finland), made by decision of 19 November 2007, received at the Court on the same day, in the proceedings brought by

A,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Ó Caoimh, J.N. Cunha Rodrigues (Rapporteur), U. Lõhmus and P. Lindh, Judges,

Advocate General: J. Kokott,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 22 October 2008,

* Language of the case: Finnish.

after considering the observations submitted on behalf of:

— the Finnish Government, by J. Heliskoski and A. Guimaraes-Purokoski, acting as Agents,

— the German Government, by M. Lumma and J. Kemper, acting as Agents,

— the Greek Government, by T. Papadopoulou, acting as Agent,

— the Italian Government, by R. Adam, acting as Agent, and W. Ferrante, avvocato dello Stato,

— the United Kingdom Government, by V. Jackson, acting as Agent, and C. Howard QC,

— the Commission of the European Communities, by P. Aalto and V. Joris, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 January 2009,

gives the following

Judgment

1 This reference 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) ('the Regulation').

2 The reference was made in the course of an appeal brought by Ms A, the mother of children C, D and E, against the decision of the Kuopion hallinto-oikeus (Administrative Court, Kuopio (Finland)) confirming the decision by which the perusturvalautakunta (Basic Welfare Committee, 'the Welfare Committee') took the children urgently into care and placed them in a childcare unit.

Legal background

Community law

3 Recitals 12 and 13 in the preamble to the Regulation 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.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case....'

4 Article 1(1) of the Regulation provides:

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

…

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.’

5 Article 8(1) of the Regulation states:

‘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.’

6 Article 13(1) of the Regulation is worded as follows:

‘Where a child’s habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the courts of the Member State where the child is present shall have jurisdiction.’

7 Article 15(1) of the Regulation provides:

'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.'

8 Under Article 17 of the Regulation:

'Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.'

9 Article 20(1) of the Regulation provides:

'In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.'

10 Article 53 of the Regulation states:

'Each Member State shall designate one or more central authorities to assist with the application of this Regulation and shall specify the geographical or functional jurisdiction of each. Where a Member State has designated more than one central authority, communications shall normally be sent direct to the relevant central authority with jurisdiction. Where a communication is sent to a central authority without jurisdiction, the latter shall be responsible for forwarding it to the central authority with jurisdiction and informing the sender accordingly.'

11 Article 55 of the Regulation provides inter alia:

'The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public

authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:

(a) collect and exchange information:

(i) on the situation of the child;

(ii) on any procedures under way; or

(iii) on decisions taken concerning the child;

…

(c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;

…'

National legislation

12 According to Paragraph 15(1) of the Law on Social Care (sosiaalihuoltolaki (710/1982)) ('Law 710/1982'), in the version in force at the material time, in urgent cases or where the circumstances so require, a municipality is to ensure that institutional care and other social services are provided for persons staying in its area other than municipal residents.

13 Under Paragraph 16 of the Law on the Protection of Children (lastensuojelulaki (693/1983)) ('Law 683/1983'), in the version in force at the material time, a social welfare body of the municipality must provide assistance without delay where the health or development of a child or young person is endangered or not safeguarded by the conditions in which he is being raised.

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

14 In December 2001, the children C, D and E settled in Sweden accompanied by their mother, Ms A, and their stepfather, Mr F. Previously, D and E had been taken into care by municipality X in Finland. The reason for their being taken into care was their stepfather's violence, but that measure was subsequently discontinued. In the summer of 2005, the family left Sweden to spend the holidays in Finland. They stayed on Finnish territory, living in caravans, on various campsites, and the children did not go to school. On 30 October 2005, the family applied to the social services department of the Finnish municipality Y for social housing.

15 By decisions of the Welfare Committee of 16 November 2005, adopted on the basis of Law 683/1983, the children C, D and E were taken into immediate care in Finland and placed in a foster-family on the ground that they had been abandoned.

16 Ms A and Mr F applied for the decisions relating to the urgent taking into care to be quashed.

17 By decisions of 15 December 2005, the Welfare Committee rejected the application and, under Paragraph 16 of Law 683/1983, took the children C, D and E into care and ordered them to be placed in a childcare unit.

18 Ms A brought an action before the Kuopion hallinto-oikeus, seeking to have those decisions quashed, and requested that her children should be returned to her custody. Ms A stated that when she went to Sweden with Mr F in mid-November 2005 her children had remained in Finland with their stepfather's sister. By decision of 25 October 2006, the Kuopion hallinto-oikeus dismissed the action and upheld the contested decisions. The ground of its decision was that, in light of Paragraph 15(1) of Law 710/1982, the Welfare Committee had acted within the scope of its powers. The court added that the living conditions of the children concerned had seriously endangered their psychological state, their health and their development. The taking into care and placement of the children had enabled them to receive the psychiatric care they needed, had allowed them to go to school, and had provided them with a safe and secure environment.

19 Ms A lodged an appeal against that decision before the Korkein hallinto-oikeus (Supreme Administrative Court) (Finland), alleging that the Finnish authorities lacked competence. In that connection, Ms A stated that the children C, D and E had, since 2 April 2007, been Swedish nationals and that their permanent residence had for a long time been in Sweden. Therefore, the case fell within the jurisdiction of the Swedish courts.

20 Taking the view that the interpretation of the Regulation was necessary for it to resolve the dispute before it, the Korkein hallinto-oikeus decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. (a) Does … [the] Regulation … apply to the enforcement, such as in the present case, of a public-law decision made in connection with child protection, as a single decision, concerning the immediate taking into care of a child and his or her placement outside the home, in its entirety,

(b) or, having regard to the provision in Article 1(2)(d) of the regulation, only to the part of the decision relating to the placement outside the home?

2. How is the concept of habitual residence in Article 8(1) of the regulation, like the associated Article 13(1), to be interpreted in Community law, bearing in mind in particular the situation in which a child has a permanent residence in one Member State but is staying in another Member State, carrying on a peripatetic life there?

3. (a) If it is considered that the child's habitual residence is not in the latter Member State, on what conditions may an urgent measure (taking into care) nevertheless be taken in that Member State on the basis of Article 20(1) of the regulation?

(b) Is a protective measure within the meaning of Article 20(1) of the regulation solely a measure which can be taken under national law, and are the provisions of national law concerning that measure binding when the article is applied?

(c) Must the case, after the taking of the protective measure, be transferred of the court's own motion to the court of the Member State with jurisdiction?

4. If the court of a Member State has no jurisdiction at all, must it dismiss the case as inadmissible or transfer it to the court of the other Member State?'

The questions referred for a preliminary ruling

The first question

21 This question seeks, in substance, to determine whether Article 1(1) of the Regulation is to be interpreted to the effect that, first, it applies to a single decision ordering a child to be taken into care immediately and placed outside his original home and, second, that decision is covered by the term 'civil matters' for the purposes of that provision, where it was adopted in the context of public law rules relating to child protection.

22 That question was referred by the same national court, is based on the same reasoning, and is drafted in exactly the same terms as the first question in Case C-435/06 *C* [2007] ECR I-10141. In those circumstances, it requires the same answer as that given to the first question in *C*.

23 Article 2(7) of the Regulation establishes that 'parental responsibility' encompasses 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.

24 In accordance with Article 1(2)(d) of the Regulation, the placement of a child in a foster-family or in institutional care is one of the matters relating to parental responsibility.

25 Moreover, it is clear from Recital 5 in the preamble to the Regulation that, in order to ensure equality for all children, that regulation covers all decisions on parental responsibility, including measures for the protection of the child.

26 A decision to take a child into care, such as that at issue in the main proceedings, is inherently an act of the public authorities the aim of which is to satisfy the need to protect and assist young persons.

27 The term 'civil matters' must be interpreted as capable of extending to measures which, from the point of view of the law of a Member State, fall under public law.

28 That interpretation is supported by Recital 10 in the preamble to the Regulation, according to which that regulation is not intended to apply to 'public measures of a general nature in matters of education or health.' That exception confirms that the Community legislature did not intend to exclude all measures falling under public law from the scope of the regulation.

29 Therefore, the answer to the first question is that Article 1(1) of the Regulation must be interpreted as meaning that a decision ordering that a child be immediately taken into care and placed outside his original home is covered by the term 'civil matters', for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.

The second question

30 By its second question, the referring court is uncertain about the interpretation to be given to the concept of 'habitual residence' within the meaning of Article 8(1) of the Regulation, in particular in a situation in which the child has a permanent residence in one Member State but is staying in another Member State carrying on a peripatetic life there.

31 Article 8(1) of the Regulation lays down the principle that the jurisdiction of the courts of the Member States in matters of parental responsibility is established according to the place of the child's habitual residence at the time the court is seised, but does not however define the content of that concept.

32 Under Article 13(1) of the Regulation, where a child's habitual residence cannot be established the courts of the Member State where the child is present are to have jurisdiction.

33 Thus, the physical presence alone of the child in a Member State, as a jurisdictional rule alternative to that laid down in Article 8 of the Regulation, is not sufficient to establish the habitual residence of the child.

34 According to settled case-law, it follows from the need for uniform application of Community law and from the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, in particular, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, and Case C-98/07 *Nordania Finans and BG Factoring* [2008] ECR I-1281, paragraph 17).

35 Since Article 8(1) of the Regulation does not make any express reference to the law of the Member States for the purpose of determining the meaning and scope of the concept of 'habitual residence', that determination must be made in the light of the context of the provisions and the objective of the Regulation, in particular that which is apparent from Recital 12 in the preamble, according to which the grounds of jurisdiction which it establishes are shaped in the light of the best interests of the child, in particular on the criterion of proximity.

36 The case-law of the Court relating to the concept of habitual residence in other areas of European Union law (see, in particular, Case C-452/93 P *Magdalena Fernández* v *Commission* [1994] ECR I-4295, paragraph 22; Case C-372/02 *Adanez-Vega* [2004] ECR I-10761, paragraph 37; and Case C-66/08 *Kozłowski* [2008] ECR I-6041)

cannot be directly transposed in the context of the assessment of the habitual residence of children for the purposes of Article 8(1) of the Regulation.

37 The 'habitual residence' of a child, within the meaning of Article 8(1) of the Regulation, must be established on the basis of all the circumstances specific to each individual case.

38 In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.

39 In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.

40 As the Advocate General pointed out in point 44 of her Opinion, the parents' intention to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or lease of a residence in the host Member State, may constitute an indicator of the transfer of the habitual residence. Another indicator may be constituted by lodging an application for social housing with the relevant services of that State.

41 By contrast, the fact that the children are staying in a Member State where, for a short period, they carry on a peripatetic life, is liable to constitute an indicator that they do not habitually reside in that State.

42 In the light of the criteria laid down in paragraphs 38 to 41 of this judgment and according to an overall assessment, it is for the national court to establish the place of the children's habitual residence.

43 However, it is conceivable that at the end of that assessment it is impossible to establish the Member State in which the child has his habitual residence. In such an exceptional case, and if Article 12 of the Regulation, which concerns the jurisdiction of the national courts with respect to questions relating to parental responsibility where those questions are related to an application for divorce, legal separation or marriage annulment, is not applicable, the national courts of the Member State in which the child is present acquire jurisdiction to hear and determine the substance of the case pursuant to Article 13(1) of the Regulation.

44 Therefore, the answer to the second question is that the concept of 'habitual residence' under Article 8(1) of the Regulation must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.

The third question

45 By this question, the referring court asks, first, the conditions to which the adoption of a protective measure such as the taking into care of children is subject under Article 20(1) of the Regulation. Second, it wishes to know whether such a measure may be applied in accordance with national law and whether the provisions of that law relating to that measure are binding. Third, it asks whether, after the protective measure is taken, the case must be transferred to the court of another Member State having jurisdiction.

46 Under Article 20(1) of the Regulation, in urgent cases, the provisions of the Regulation are not to prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under the Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

47 It follows from the very wording of Article 20(1) that the adoption of measures in matters of parental responsibility by courts of Member States which do not have jurisdiction as to the substance of the matter is subject to three cumulative conditions, namely:

— the measures concerned must be urgent;

— they must be taken in respect of persons or assets in the Member State where the court seised of the dispute is situated; and

— they must be provisional.

48 Those measures are applicable to children who have their habitual residence in one Member State but stay temporarily or intermittently in another Member State and are in a situation likely seriously to endanger their welfare, including their health or their development, thereby justifying the immediate adoption of protective measures. The provisional nature of such measures arises from the fact that, pursuant to Article 20(2) of the Regulation, they cease to apply when the court of the Member State having jurisdiction as to the substance of the matter has taken the measures it considers appropriate.

49 The Regulation does not include substantive provisions concerning the type of urgent measures which must be applied.

50 Article 20(1) of the Regulation provides that the provisional or protective measures that the courts of a Member State are required to take in urgent cases are those 'available under the law of that Member State'.

51 In that context, it is for the national legislature to lay down the measures to be adopted by the national authorities in order to protect the best interests of the child and to lay down detailed procedural rules for their implementation.

52 Since such measures are adopted on the basis of provisions of national law the binding nature of those measures must stem from the national legislation concerned.

53 It remains to be ascertained whether, after a protective measure has been taken, the case must be automatically transferred to the court of another Member State having jurisdiction.

54 Under Article 15(1)(b) of the Regulation, 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, request a court of that State to assume jurisdiction.

55 In the context of provisions relating to the rules of jurisdiction in matters of parental responsibility, Article 15 is the only one to provide for a request to the court of another Member State to assume jurisdiction.

56 The Regulation does not require the national courts which adopt provisional or protective measures to transfer the case to a court of another Member State after those measures have been taken.

57 A separate issue is whether the national courts which have taken provisional or protective measures must inform the courts of another Member State having jurisdiction.

58 As stated in paragraph 48 of this judgment, under Article 20(2) of the Regulation, provisional or protective measures cease to apply when the court of the Member State having jurisdiction as to the substance of the matter has taken the measures it considers appropriate.

59 Since provisional or protective measures are temporary, circumstances related to the physical, psychological and intellectual development of the child may require early intervention by the court having jurisdiction in order for definitive measures to be adopted.

60 The need for and urgency of definitive measures must be determined having regard to the child's circumstances, his likely development and the effectiveness of the provisional or protective measures adopted.

61 In that context, the protection of the best interests of the child may require that the national court which has taken provisional or protective measures inform, directly or through the central authority designated under Article 53 of the Regulation, the court of another Member State having jurisdiction.

62 Cooperation in the context of cases specific to parental responsibility is provided for in Article 55 of the Regulation and includes, in particular, collection and exchange of information on the situation of the child, on any procedures under way and on decisions taken concerning the child.

63 Article 55(c) of the Regulation provides for communication between the courts of the Member States for the application of the Regulation.

64 It follows that, in so far as the protection of the best interests of the child so require, the national court which has taken provisional or protective measures must inform, directly or through the central authority designated under Article 53 of the Regulation, the court of another Member State having jurisdiction.

65 In light of the foregoing considerations, the answer to the third question is that a protective measure, such as the taking into care of children, may be decided by a national court under Article 20 of the Regulation if the following conditions are satisfied:

— the measure must be urgent;

— it must be taken in respect of persons in the Member State concerned; and

— it must be provisional.

The taking of the measure and its binding nature are determined in accordance with national law. After the protective measure has been taken, the national court is not required to transfer the case to the court of another Member State having jurisdiction. However, in so far as the protection of the best interests of the child so requires, the national court which has taken provisional or protective measures must inform, directly or through the central authority designated under Article 53 of the Regulation, the court of another Member State having jurisdiction.

The fourth question

66 By that question, the referring court asks essentially whether, where the court of a Member State has no jurisdiction at all, it must declare that it has no jurisdiction or transfer the case to the court of another Member State.

67 In accordance with Article 17 of the Regulation, '[w]here a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.'

68 As stated in paragraph 55 of this judgment, in the context of provisions relating to the rules of jurisdiction in matters of parental responsibility, Article 15 of the Regulation is the only article to provide for a request to the court of another Member State to assume jurisdiction.

69 If the court of a Member State declares of its own motion that it does not have jurisdiction, the Regulation does not provide that the case must be transferred to a court of another Member State.

70 However, for reasons identical to those set out in paragraphs 59 to 63 of this judgment and in so far as the protection of the best interests of the child so require, the national court which has declared of its own motion that it does not have jurisdiction must inform, directly or through the central authority designated under Article 53 of the Regulation, the court of another Member State having jurisdiction.

71 Therefore the answer to the fourth question is that, where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of the Regulation, the court of another Member State having jurisdiction.

Costs

72 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 (Third Chamber) hereby rules:

1. **Article 1(1) 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 a decision ordering that a child be immediately taken into care and placed outside his original home is covered by the term 'civil matters', for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.**

2. **The concept of 'habitual residence' under Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and**

family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.

3. A protective measure, such as the taking into care of children, may be decided by a national court under Article 20 of Regulation No 2201/2003 if the following conditions are satisfied:

— **the measure must be urgent;**

— **it must be taken in respect of persons in the Member State concerned; and**

— **it must be provisional.**

4. The taking of the measure and its binding nature are determined in accordance with national law. After the protective measure has been taken, the national court is not required to transfer the case to the court of another Member State having jurisdiction. However, in so far as the protection of the best interests of the child so requires, the national court which has taken

provisional or protective measures must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

5. Where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

[Signatures]