JUDGMENT OF THE COURT (Third Chamber)

5 October 2010 *

In Case C-400/10 PPU,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 30 July 2010, received at the Court on 6 August 2010, in the proceedings

J. McB.

v

L. E.,

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, R. Silva de Lapuerta, E. Juhász, T. von Danwitz and D. Šváby, Judges,

* Language of the case: English.

Advocate General: N. Jääskinen,
Registrar: L. Hewlett, Principal Administrator,

having regard to the request by the national court that the reference for a preliminary ruling be dealt with under an urgent procedure, in accordance with Article 104b of the Rules of Procedure,

having regard to the decision of 11 August 2010 of the Third Chamber granting that request,

having regard to the written procedure and further to the hearing on 20 September 2010,

after considering the observations submitted on behalf of:

— Mr McB., by D. Browne SC and D. Quinn BL, instructed by J. McDaid, Solicitor,

— Ms E., by G. Durcan SC, and by N. Jackson BL and S. Fennell BL, instructed by M. Quirke, Solicitor,

— Ireland, by D. O'Hagan, acting as Agent, and by M. MacGrath SC and N. Travers BL,

— the German Government, by J. Kemper, acting as Agent,

— the European Commission, by A.-M. Rouchaud-Joët and M. Wilderspin, acting as Agents,

after hearing the Advocate General,

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).

2 The reference has been made in proceedings between Mr McB., who is the father of three children, and Ms E., who is the mother of those children, concerning the return to Ireland of those children, who are currently in England with their mother.

Legal context

The 1980 Hague Convention

3 Article 1 of the Hague Convention of 25 October 1980 on the civil aspects of international child abduction ('the 1980 Hague Convention') provides:

'The objects of the present Convention are:

(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.'

4 Article 3 of that convention is worded as follows:

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

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

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

5 Article 15 of the 1980 Hague Convention is worded as follows:

'The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.'

European Union law

6 Recital 17 in the preamble to Regulation No 2201/2003 states:

'In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end [the 1980 Hague Convention] would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. …'

7 Under recital 33 in the preamble to that regulation:

'This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union ["the Charter"]. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of [the Charter].'

8 Article 2(9) of that regulation defines 'rights of custody' as covering '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'.

9 Article 2(11) of Regulation No 2201/2003 provides that the 'removal or retention … of a child' is wrongful 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.'

10 Article 11 of that regulation, 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.

…

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

…

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.'

11 Article 60 of Regulation No 2201/2003, headed 'Relations with certain multilateral conventions', is worded as follows:

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

…

(e) the [1980 Hague Convention].'

12 Article 62(2) of that regulation, headed 'Scope of effects', provides:

'The conventions mentioned in Article 60, in particular the 1980 Hague Convention, continue to produce effects between the Member States which are party thereto, in compliance with Article 60.'

National law

13 It is apparent from the order for reference that, under Irish law, the natural father of children does not, by operation of law, have rights of custody. Moreover, the fact that unmarried parents have cohabited and that the father has been actively engaged in the upbringing of the child does not, by itself, give such rights to the father.

14 However, under Section 6A of the Guardianship of Infants Act 1964, as inserted by Section 12 of the Status of Children Act 1987, 'where the father and mother have not married each other, the court may, on the application of the father, by order appoint him to be a guardian of the infant.'

15 Section 11(4) of the Guardianship of Infants Act 1964, as amended by Section 13 of the Status of Children Act 1987, provides:

'In the case of an infant whose father and mother have not married each other, the right to make an application under this section regarding the custody of the infant and the right of access thereto of his father or mother shall extend to the father who is not a guardian of the infant, and for this purpose references in this section to the father or parent of an infant shall be construed as including him.'

16 Section 15 of the Child Abduction and Enforcement of Custody Orders Act 1991, as amended by the European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005, is worded as follows:

'The Court may, on an application made for the purposes of Article 15 of the [1980 Hague Convention], by any person appearing to the Court to have an interest in the matter, make a declaration that the removal of any child from, or his retention outside, the State was:

(a) in the case of a removal or retention in a Member State, a wrongful removal or retention within the meaning of Article 2 of [the regulation], or

(b) in any other case, wrongful within the meaning of Article 3 of [the 1980 Hague Convention].'

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

The facts which gave rise to the dispute

17 It is apparent from the documents submitted to the Court that the applicant in the main proceedings, Mr McB., who is of Irish nationality, and the defendant in those proceedings, Ms E., who is of British nationality, lived together as an unmarried couple for more than 10 years in England, Australia, Northern Ireland and, from November 2008, Ireland. They had three children together, namely J., born in England on 21 December 2000, E., born in Northern Ireland on 20 November 2002, and J.C., born in Northern Ireland on 22 July 2007.

18 After the couple's relationship deteriorated in late 2008 and early 2009, the mother, alleging aggressive behaviour on the part of the father, fled on several occasions, with her children, to a women's refuge. In April 2009 the couple were reconciled and they decided to marry on 10 October 2009. However, on 11 July 2009 the father discovered, on returning from a work-related journey to Northern Ireland, that the mother had again left the family home with her children and was living at the women's refuge.

19 On 15 July 2009 the father's lawyers prepared, on his instructions, an application to initiate proceedings before the Irish court with jurisdiction, namely the District Court, in order to obtain rights of custody in respect of his three children. However,

on 25 July 2009 the mother took a flight to England, taking with her the abovementioned three children, and her other, older, child from a previous relationship. At that date, the abovementioned application had not been served on the mother, with the result that, in accordance with Irish procedural law, the action had not been validly brought and the Irish court had therefore not been seised.

The proceedings brought by the father in England

20 On 2 November 2009 Mr McB. brought an action before the High Court of Justice of England and Wales (Family Division) (United Kingdom) seeking the return of the children to Ireland, in accordance with the provisions of the 1980 Hague Convention and Regulation No 2201/2003. By order of 20 November 2009 that court requested that the father, pursuant to Article 15 of that convention, obtain a decision or a determination from the Irish authorities declaring that the removal of the children was wrongful within the meaning of Article 3 of that convention.

The proceedings brought by the father in Ireland

21 On 22 December 2009 Mr McB. brought an action before the High Court (Ireland) seeking, first, a decision or a determination declaring that the removal of his three children on 25 July 2009 had been wrongful within the meaning of Article 3 of the 1980 Hague Convention and, secondly, rights of custody.

22 By a judgment of 28 April 2010 the High Court dismissed the first of those claims, on the ground that the father had no rights of custody in respect of the children at the time of their removal, and consequently the removal was not wrongful within the meaning of either the 1980 Hague Convention or Regulation No 2201/2003.

23 The father brought an appeal against that decision before the referring court. In its reference for a preliminary ruling, that court states that on 25 July 2009 the father had no rights of custody, within the meaning of the provisions of the 1980 Hague Convention, in respect of his children. However, the referring court considers that the definition of 'rights of custody', for the purposes of an application to obtain the return of children from one Member State to another on the basis of the 1980 Hague Convention, is now to be found in Article 2(9) of the above regulation.

24 The referring court considers that neither the provisions of Regulation No 2201/2003 nor Article 7 of the Charter mean that the natural father of a child must necessarily be recognised as having rights of custody in respect of that child, for the purposes of determining whether or not the removal of the child is wrongful, in the absence of a court judgment awarding such rights to him. However, the court accepts that the interpretation of those provisions of European Union law falls within the jurisdiction of the Court of Justice.

25 In those circumstances, the Supreme Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does [Regulation No 2201/2003], whether interpreted pursuant to Article 7 of [the Charter] or otherwise, preclude a Member State from requiring by its law that the father of a child who is not married to the mother shall have obtained an order of a court of competent jurisdiction granting him custody in order to qualify as having

"custody rights" which render the removal of that child from its country of habitual residence wrongful for the purposes of Article 2(11) of that Regulation?'

The urgent procedure

26 The referring court requested that this reference for a preliminary ruling be dealt with under the urgent procedure provided for in Article 104b of the Court's Rules of Procedure.

27 The reason stated by the referring court for that request is that, according to recital 17 in the preamble to Regulation No 2201/2003, in cases of wrongful removal of a child, the return of the child should be obtained without delay.

28 In that regard, it must be observed that, according to the order for reference, the present case concerns three children aged three, seven and nine years old who have been separated from their father for more than a year. Given that the children concerned, and especially the youngest, are young children, the continuation of the current situation might seriously harm their relationships with their father.

29 In those circumstances, on 11 August 2010 the Third Chamber of the Court decided, on the Judge-Rapporteur's proposal and after hearing the Advocate General, to grant the referring court's request that the reference for a preliminary ruling be dealt with under the urgent procedure.

Consideration of the question referred

Admissibility

30 The European Commission raises doubts as to the admissibility of the reference for a preliminary ruling and the German Government argues that it is inadmissible. They state, in essence, that the dispute in the main proceedings concerns not the return of children, pursuant to Article 11 of Regulation No 2201/2003, but the obtaining, prior to return, of a decision declaring that the removal of the children was wrongful under Article 15 of the 1980 Hague Convention. What is therefore at issue in those proceedings is whether the removal of the children is lawful, not within the meaning of Article 2(11) of the regulation, but within the meaning of Articles 1 and 3 of the Convention. Their argument is that the applicant in the main proceedings brought, before the appropriate Irish courts, an application seeking from them a decision or a determination declaring that the removal or retention of his children was wrongful within the meaning of Article 3 of the Convention. The applicant made that application because the High Court of Justice of England and Wales (Family Division) had requested that he obtain such a decision or determination, in accordance with Article 15 of that convention.

31 However, Regulation No 2201/2003, and in particular Article 11 thereof, is concerned not with the procedure laid down in Article 15 of the 1980 Hague Convention, relating to the determination that the removal of a child is wrongful, but solely with the procedure relating to that child's return. Accordingly, Article 11 of that regulation becomes relevant only when the procedure relating to Article 15 of the convention has come to an end and when the procedure relating to the return of the children has commenced. Consequently the question referred for a preliminary ruling is premature.

32 In that regard, it must be recalled that, according to the Court's case-law, it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court (Joined Cases C-376/05 and C-377/05 *Brünsteiner and Autohaus Hilgert* [2006] ECR I-11383, paragraph 26 and case-law cited).

33 Consequently, where the questions submitted by the national court concern the interpretation of European Union law, the Court of Justice is, in principle, bound to give a ruling (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38, and Case C-103/08 *Gottwald* [2009] ECR I-9117, paragraph 16).

34 It follows that the presumption that questions referred by national courts for a preliminary ruling are relevant may be rebutted only in exceptional cases, in particular where it is quite obvious that the interpretation which is sought of the provisions of European Union law referred to in those questions bears no relation to the actual facts of the main action or to its purpose (see, inter alia, *Gottwald*, paragraph 17, and Case C-82/09 *Dimos Agios Nikolaos* [2010] ECR I-3649, paragraph 15).

35 In the present case, the referring court considers that it needs an interpretation of Regulation No 2201/2003, and in particular Article 2(11), in order to give a ruling on the application before it, which seeks from that court a decision or a determination declaring that the removal or retention of the children concerned in the dispute in the main proceedings was wrongful. It is evident moreover from the relevant national legislation, namely Section 15 of the Child Abduction and Enforcement of Custody Orders Act 1991, as amended by the European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005, that, in cases of removal of a child to another Member State, the issue on which the national court must rule, when an applicant requests that it deliver such a decision or determination

in accordance with Article 15 of the 1980 Hague Convention, is whether the removal is lawful under Article 2 of Regulation No 2201/2003.

36 Furthermore, it must be observed that, pursuant to Article 60 of Regulation No 2201/2003, in relations between Member States that regulation is to take precedence over the 1980 Hague Convention in so far as the latter concerns matters governed by that regulation. Subject to the primacy of that regulation, the Convention is to continue to produce effects between the Member States which are party thereto, in compliance with Article 60, pursuant to Article 62(2) of Regulation No 2201/2003, as stated in recital 17 in its preamble. Consequently, abductions of children from one Member State to another are now subject to a body of rules consisting of the provisions of the 1980 Hague Convention as complemented by those of Regulation No 2201/2003, though the latter take precedence on matters within the scope of that regulation.

37 In those circumstances, it is not obvious that the interpretation sought by the referring court is of no relevance to the decision which that court is called upon to make.

38 Consequently, the reference for a preliminary ruling must be declared to be admissible.

Substance

39 The referring court asks, in essence, whether Regulation No 2201/2003 must be interpreted as precluding a Member State from providing by its law that the acquisition of rights of custody by a child's father, where he is not married to the child's mother, is dependent on the father's obtaining a judgment from a national court with

jurisdiction awarding such rights of custody to him, on the basis of which the removal of the child by its mother or the retention of that child may be considered wrongful, within the meaning of Article 2(11) of that regulation.

40 In that regard, it must be recalled that Article 2(9) of that regulation defines 'rights of custody' as covering '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'.

41 Since 'rights of custody' is thus defined by Regulation No 2201/2003, it is an autonomous concept which is independent of the law of Member States. It follows from the need for uniform application of European Union law and from the principle of equality that the terms of a provision of that 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 Union, having regard to the context of the provision and the objective pursued by the legislation in question (C-66/08 *Kozłowski* [2008] ECR I-6041, paragraph 42 and case-law cited). Accordingly, for the purposes of applying Regulation No 2201/2003, rights of custody include, in any event, the right of the person with such rights to determine the child's place of residence.

42 An entirely separate matter is the identity of the person who has rights of custody. In that regard, it is apparent from Article 2(11)(a) of that regulation that whether or not a child's removal is wrongful depends on the existence of 'rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention'.

43 It follows that Regulation No 2201/2003 does not determine which person must have such rights of custody as may render a child's removal wrongful within the meaning of Article 2(11), but refers to the law of the Member State where the child was habitually resident immediately before its removal or retention the question of who has such rights of custody. Accordingly, it is the law of that Member State which determines the conditions under which the natural father acquires rights of custody in respect of his child, within the meaning of Article 2(9) of that regulation, and which may provide that his acquisition of such rights is dependent on his obtaining a judgment from the national court with jurisdiction awarding such rights to him.

44 In the light of the foregoing, Regulation No 2201/2003 must be interpreted as meaning that whether a child's removal is wrongful for the purposes of applying that regulation is entirely dependent on the existence of rights of custody, conferred by the relevant national law, in breach of which that removal has taken place.

45 However, the referring court asks whether the Charter, and in particular Article 7 thereof, affects this interpretation of Regulation No 2201/2003.

46 The applicant in the main proceedings does not accept that the removal of a child by its mother without the knowledge of its natural father is not wrongful under the 1980 Hague Convention and Regulation No 2201/2003, even though the father lived with his child, and with the child's mother though not married to her, and played an active part in bringing up that child.

47 In the applicant's opinion, the interpretation of that regulation set out in paragraph 44 of this judgment can lead to a situation which would not be compatible either with his right to respect for private and family life, established in Article 7 of the Charter and in Article 8 of the European Convention for the Protection of Human Rights and

Fundamental Freedoms ('the ECHR'), or with the rights of the child, set out in Article 24 of the Charter. For the purposes of Regulation No 2201/2003, 'rights of custody' should be interpreted as meaning that such rights are acquired by a natural father by operation of law in a situation where he and his children have a family life which is the same as that of a family based on marriage. If that interpretation were to be rejected, the 'inchoate' right of the father, enabling him to submit an application to the national court with jurisdiction and, where appropriate, obtain rights of custody, could be deprived of all effect by acts carried out by the mother unilaterally and without the knowledge of the father. The effectiveness of the right to submit such an application should be adequately protected.

48 The referring court states that, under Irish law, the natural father does not have rights of custody in respect of his child, unless those rights are conferred on him by an agreement entered into by the parents or by a court judgment, whereas such rights of custody automatically belong to the mother, and no attribution of them to her is necessary.

49 In those circumstances, the Court must examine whether respect for the fundamental rights of the natural father and his children precludes the interpretation of Regulation No 2201/2003 set out in paragraph 44 of this judgment.

50 In that regard, it must be recalled that, in accordance with the first subparagraph of Article 6(1) TEU, the Union recognises the rights, freedoms and principles set out in the Charter, 'which shall have the same legal value as the Treaties'.

51 First, according to Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing European Union law. Under Article 51(2), the Charter does not e.xtend the field of application of European Union law beyond the powers of the Union, and it does not 'establish any new power or task for

the Union, or modify powers and tasks as defined in the Treaties'. Accordingly, the Court is called upon to interpret, in the light of the Charter, the law of the European Union within the limits of the powers conferred on it.

52 It follows that, in the context of this case, the Charter should be taken into consideration solely for the purposes of interpreting Regulation No 2201/2003, and there should be no assessment of national law as such. More specifically, the question is whether the provisions of the Charter preclude the interpretation of that regulation set out in paragraph 44 of this judgment, taking into account, in particular, the reference to national law which that interpretation involves.

53 Moreover, it follows from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, their meaning and scope are to be the same as those laid down by the ECHR. However, that provision does not preclude the grant of wider protection by European Union law. Under Article 7 of the Charter, '[e]veryone has the right to respect for his or her private and family life, home and communications'. The wording of Article 8(1) of the ECHR is identical to that of the said Article 7, except that it uses the expression 'correspondence' instead of 'communications'. That being so, it is clear that the said Article 7 contains rights corresponding to those guaranteed by Article 8(1) of the ECHR. Article 7 of the Charter must therefore be given the same meaning and the same scope as Article 8(1) of the ECHR, as interpreted by the case-law of the European Court of Human Rights (see, by analogy, Case C-450/06 *Varec* [2008] ECR I-581, paragraph 48).

54 The European Court of Human Rights has already considered a case in which the facts were comparable to those of the case in the main proceedings, where the child of an unmarried couple was taken to another State by its mother, who was the only person with parental responsibility for that child. In that regard, that court ruled, in

essence, that national legislation granting, by operation of law, parental responsibility for such a child solely to the child's mother is not contrary to Article 8 of the ECHR, interpreted in the light of the 1980 Hague Convention, provided that it permits the child's father, not vested with parental responsibility, to ask the national court with jurisdiction to vary the award of that responsibility (*Guichard v. France* ECHR 2003-X 714; see also, to that effect, *Balbontin v. United Kingdom*, no.39067/97, 14 September 1999).

55 It follows that, for the purposes of applying Regulation No 2201/2003 in order to determine whether the removal of a child, taken to another Member State by its mother, is lawful, that child's natural father must have the right to apply to the national court with jurisdiction, before the removal, in order to request that rights of custody in respect of his child be awarded to him, which, in such a context, constitutes the very essence of the right of a natural father to a private and family life.

56 The European Court of Human Rights has also ruled that national legislation which does not allow the natural father any possibility of obtaining rights of custody in respect of his child in the absence of the mother's agreement constitutes unjustified discrimination against the father and is therefore a breach of Article 14 of the ECHR, taken together with Article 8 of the ECHR (*Zaunegger v. Germany*, no. 22028/04, § 63 and 64, 3 December 2009).

57 On the other hand, the fact that, unlike the mother, the natural father is not a person who automatically possesses rights of custody in respect of his child within the meaning of Article 2 of Regulation No 2201/2003 does not affect the essence of his right to private and family life, provided that the right described in paragraph 55 of this judgment is safeguarded.

58 That finding is not invalidated by the fact that, if steps are not taken by such a father in good time to obtain rights of custody, he finds himself unable, if the child is removed to another Member State by its mother, to obtain the return of that child to the Member State where the child previously had its habitual residence. Such a removal represents the legitimate exercise, by the mother with custody of the child, of her own right of freedom of movement, established in Article 20(2)(a) TFEU and Article 21(1) TFEU, and of her right to determine the child's place of residence, and that does not deprive the natural father of the possibility of exercising his right to submit an application to obtain rights of custody thereafter in respect of that child or rights of access to that child.

59 Accordingly, to admit the possibility that a natural father has rights of custody in respect of his child, under Article 2(11) of Regulation No 2201/2003, notwithstanding that no such rights are accorded to him under national law, would be incompatible with the requirements of legal certainty and with the need to protect the rights and freedoms of others, within the meaning of Article 52(1) of the Charter, in this case those of the mother. Such an outcome might, moreover, infringe Article 51(2) of the Charter.

60 It must also be borne in mind that Article 7 of the Charter, mentioned by the referring court in its question, must be read in a way which respects the obligation to take into consideration the child's best interests, recognised in Article 24(2) of that Charter, and taking into account the fundamental right of a child to maintain on a regular basis personal relationships and direct contact with both of his or her parents, stated in Article 24(3) (see, to that effect, Case C-540/03 *Parliament* v *Council* [2006] ECR I-5769, paragraph 58). Moreover, it is apparent from recital 33 in the preamble to Regulation No 2201/2003 that that regulation recognises the fundamental rights and observes the principles of the Charter, while, in particular, seeking to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter. Accordingly, the provisions of that regulation cannot be interpreted in such a way that they disregard that fundamental right of the child, the respect for which undeniably

merges into the best interests of the child (see, to that effect, Case C-403/09 PPU *Detiček* [2009] ECR I-12193, paragraphs 53 to 55).

61 In those circumstances, it remains to be determined whether Article 24 of the Charter, respect for which is ensured by the Court, precludes the interpretation of Regulation No 2201/2003 which is set out in paragraph 44 of this judgment.

62 It is necessary to take into account, in this regard, the great variety of extra-marital relationships and consequent parent-child relationships, a variety referred to by the referring court in its order for reference, which is reflected in the variation among Member States of the extent of parental responsibilities and their attribution. Accordingly, Article 24 of the Charter must be interpreted as not precluding a situation where, for the purposes of applying Regulation No 2201/2003, rights of custody are granted, as a general rule, exclusively to the mother and a natural father possesses rights of custody only as the result of a court judgment. Such a requirement enables the national court with jurisdiction to take a decision on custody of the child, and on rights of access to that child, while taking into account all the relevant facts, such as those mentioned by the referring court, and in particular the circumstances surrounding the birth of the child, the nature of the parents' relationship, the relationship of the child with each parent, and the capacity of each parent to take the responsibility of caring for the child. The taking into account of those facts is apt to protect the child's best interests, in accordance with Article 24(2) of the Charter.

63 It follows from the foregoing that Articles 7 and 24 of the Charter do not preclude the interpretation of the regulation set out in paragraph 44 of this judgment.

64 In those circumstances, the answer to the question referred is that Regulation No 2201/2003 must be interpreted as not precluding a Member State from providing

by its law that the acquisition of rights of custody by a child's father, where he is not married to the child's mother, is dependent on the father's obtaining a judgment from a national court with jurisdiction awarding such rights to him, on the basis of which the removal of the child by its mother or the retention of that child may be considered wrongful, within the meaning of Article 2(11) of that regulation.

Costs

65 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 these grounds, the Court (Third Chamber) hereby rules:

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 not precluding a Member State from providing by its law that the acquisition of rights of custody by a child's father, where he is not married to the child's mother, is dependent on the father's obtaining a judgment from a national court with jurisdiction awarding such rights to him, on the basis of which the removal of the child by its mother or the retention of that child may be considered wrongful, within the meaning of Article 2(11) of that regulation.

[Signatures]