

## JUDGMENT OF THE COURT (Second Chamber)

1 October 2014 (\*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Articles 8, 12 and 15 — Jurisdiction in matters of parental responsibility — Proceedings relating to the custody of a child habitually resident in the Member State of residence of his mother — Prorogation of jurisdiction in favour of a court of the Member State of residence of the father — Scope)

In Case C-436/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom), made by decision of 2 August 2013, received at the Court on the same day, in the proceedings

**E.**

v

**B.,**

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Second Chamber, J.L. da Cruz Vilaça, J.-C. Bonichot and A. Arabadjiev (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 May 2014,

after considering the observations submitted on behalf of:

- E., by C. Marín Pedreño, Solicitor, by D. Williams QC, and M. Gration, Barrister,
- B., by N. Hansen, Solicitor, H. Setright QC, E. Devereaux and R. Genova Alquacil, advocates,
- the United Kingdom Government, by V. Kaye, acting as Agent,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,
- the European Commission, by M. Wilderspin and A.-M. Rouchaud-Joët, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 This request for a preliminary ruling relates to the interpretation of Articles 8, 12 and 15 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 Mr E. ('the father') and Ms B. ('the mother'), in relation to the jurisdiction of the courts of the United Kingdom to hear and determine, in particular, the usual place of residence of their child S. and the rights of access of the father.

### Legal context

#### *EU law*

3 Recital 12 in the preamble to Regulation No 2201/2003 states:

'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.'

4 In Section 2, entitled 'Parental responsibility', of Chapter II of Regulation No 2201/2003, entitled 'Jurisdiction', Article 8 thereof, entitled '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 apply subject to Articles 9, 10 and 12.'

5 Article 9 of Regulation No 2201/2003, entitled 'Continuing jurisdiction of the child's former habitual residence', states:

1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall, by way of exception to Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.'

6 Paragraph 3 of Article 12 of Regulation No 2201/2003, which is entitled 'Prorogation of jurisdiction', provides:

'The courts of a Member State shall also have jurisdiction in relation to parental responsibility ... where:

(a) the child has a substantial connection with that Member State, in particular by virtue of

the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

- (b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.'

7 Article 15 of Regulation No 2201/2003, entitled 'Transfer to a court better placed to hear the case', states:

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

- (a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
- (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

- (a) upon application from a party; or
- (b) of the court's own motion; or
- (c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

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

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

- (a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or
- (b) is the former habitual residence of the child; or
- (c) is the place of the child's nationality; or
- (d) is the habitual residence of a holder of parental responsibility; or
- (e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

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

If the courts are not seised by that time, the court which has been seised shall continue to

exercise jurisdiction in accordance with Articles 8 to 14.

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

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.'

8 In Section 3, entitled 'Common provisions', of Chapter II of Regulation No 2201/2003, entitled 'Jurisdiction', Article 16 thereof, entitled 'Seising of a Court', provides:

'1. A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;

or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.'

9 In Section 1, entitled 'Recognition', of Chapter III of Regulation No 2201/2003, entitled 'Recognition and enforcement', Article 21(1) of that regulation, entitled 'Recognition of a judgment', states:

'A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.'

10 Also in Section 1, Article 26 of that regulation, entitled 'Non-review as to substance', provides:

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

11 In Section 4 of Chapter III, entitled 'Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child', Article 41(1) of Regulation No 2201/2003 states:

'The rights of access referred to in Article 40(1)(a) granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal.'

12 In Section 6 of Chapter III, entitled 'Other provisions', Article 47(2) of Regulation No 2201/2003 provides, in relation to the 'Enforcement procedure':

'Any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41(1) or Article 42(1) shall be

enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State.

In particular, a judgment which has been certified according to Article 41(1) or Article 42(1) cannot be enforced if it is irreconcilable with a subsequent enforceable judgment.'

*The law of the United Kingdom*

13 According to the referring court, Section 8 of the Children Act 1989 enables the courts of England and Wales to make residence orders, contact orders, prohibited steps orders and specific issue orders; the specific issues may include decisions relating to the return of the child to the jurisdiction, the place where he must attend school or whether he must undergo medical treatment.

14 Under Section 2(1)(a) of the Family Law Act 1986:

'A court in England and Wales shall not make a Section 1(1)(a) order with respect to a child unless –

(a) it has jurisdiction under [Regulation No 2201/2003] ...'.

15 According to the referring court, that provision is to be understood as meaning that a judgment given under Section 1(1)(a) is a judgment given by a court of England and Wales under Section 8 of the Children Act 1989.

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

16 The order for reference states that the father, a Spanish national, and the mother, a British national (together, 'the parents'), had been living in Spain for several years when S. was born on 27 May 2005, and that the latter was raised there until 6 February 2010.

17 At that time, the parents having separated in November 2009, the mother moved with S. to the United Kingdom. Following that move, the parents attempted in vain to reach an agreement on sharing their rights over S., which gave rise to repeated court proceedings in Spain and in the United Kingdom.

18 On 21 July 2010, the parents reached an agreement ('the agreement of 21 July 2010') on rights of custody, which were attributed to the mother, and rights of access, which were given to the father. That agreement was signed by the parents, in the presence of a clerk of the Juzgado de Primera Instancia de Torrox (Court of First Instance, Torrox, Spain). The agreement of 21 July 2010 was submitted for approval to that court, which, on 20 October 2010, adopted a decision confirming the terms thereof ('the decision of 20 October 2010').

19 On 17 December 2010, the mother lodged an application pursuant to Section 8 of the Children Act 1989 with the Principal Registry of the High Court of Justice of England and Wales, Family Division (United Kingdom). She sought a residence order, a contact order varying the terms of the rights of access set out in the agreement of 21 July 2010 and of the decision of 20 October 2010, and a specific issue order. In particular, the mother sought to reduce the rights of access which had been granted to the father by that agreement.

20 On 31 January 2011, the father submitted an application before the High Court seeking the enforcement of the decision of 20 October 2010, pursuant to Articles 41 and 47 of Regulation No 2201/2003.

21 At the hearing of 16 December 2011 which took place in the High Court, the mother

acknowledged that, having regard to the agreement of 21 July 2010 and the decision of 20 October 2010, she had prorogued the jurisdiction of the Juzgado de Primera Instancia, Torrox, under Article 12(3) of that regulation. She therefore stated that she would not resist enforcement of the decision of 20 October 2010, which was duly enforced, in accordance with the terms of the agreement of 21 July 2010. In particular, the specific rules relating to the rights of access of the father were determined until 6 January 2013.

- 22 On 20 December 2011, the mother brought proceedings before the Juzgado de Primera Instancia, Torrox, on the basis of Article 15 of Regulation No 2201/2003, seeking to transfer the prorogued jurisdiction to the courts of England and Wales. On 29 February 2012, the Juzgado de Primera Instancia, Torrox, made an order in relation to the mother's application ('the order of 29 February 2012'), which provided that '[t]he [decision of 20 October 2010] delivered in these proceedings having become final, the proceedings [having been] concluded and there being no other family proceedings pending between the parties in this court, there [was] no reason to declare the lack of jurisdiction applied for'.
- 23 On 30 June 2012, the mother once again brought the matter before the High Court seeking a declaration that the courts of England and Wales henceforth had jurisdiction in matters of parental responsibility concerning S., on the ground that the child had his habitual residence in the United Kingdom, for the purposes of Article 8 of Regulation No 2201/2003. By decision of 25 March 2013, the High Court declared that it had jurisdiction.
- 24 On 21 May 2013, the referring court granted permission to the father to appeal against the judgment of the High Court of 25 March 2013.
- 25 Pending the outcome of the appeal, the High Court states that it is not in a position to order new detailed rules in relation to the rights of access which the parents are disputing. Since it is unsure whether it has jurisdiction on the substance or only jurisdiction to enforce the agreement of 21 July 2010 and the decision of 20 October 2010, the High Court has not taken any decision in relation to the period after 6 January 2013.
- 26 In that appeal, the father submits, in essence, that, by its decision of 25 March 2013, the High Court erred in law in holding that the courts of England and Wales had jurisdiction on the substance. According to the father, a prorogation of jurisdiction pursuant to Article 12(3) of Regulation No 2201/2003 continues after the relevant proceedings have been concluded and thus provides the basis for jurisdiction for the purpose of bringing any subsequent proceedings which may be necessary to resolve questions of parental responsibility with respect to S. The father also states that such jurisdiction, which a court continues to enjoy, may be transferred in the absence of pending proceedings, pursuant to Article 15 of Regulation No 2201/2003.
- 27 The mother submits that a prorogation of the jurisdiction of the courts of a Member State under Article 12(3) of Regulation No 2201/2003 continues until there has been a final judgment in those proceedings, but not thereafter. In addition, the mother submits that Article 15 of Regulation No 2201/2003 applies only to specific proceedings, pending before the courts of a Member State, and not to the jurisdiction of that court in general, so that, in the absence of pending proceedings, there is no case to be transferred under that provision.
- 28 The referring court states that, by order of 4 July 2013, the Juzgado de Primera Instancia, Torrox, imposed a penalty of EUR 16 000 for the mother's failure to comply with the agreement of 21 July 2010 and raised the possibility of giving the father custody of S.
- 29 In those circumstances, the Court of Appeal (England and Wales) (Civil Division) (United Kingdom) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Where there has been a prorogation of the jurisdiction of a court of a Member State in relation to matters of parental responsibility pursuant to Article 12(3) of [Regulation No 2201/2003], does that prorogation of jurisdiction only continue until there has been a final judgment in those proceedings or does it continue even after the making of a final judgment?
- (2) Does Article 15 of [Regulation No 2201/2003] allow the courts of a Member State to transfer a jurisdiction in circumstances where there are no current proceedings concerning the child?’

### **Consideration of the questions referred**

#### *The first question*

- 30 By its first question, the referring court asks, in essence, if jurisdiction in matters of parental responsibility which has been prorogued, under Article 12(3) of Regulation No 2201/2003, in favour of a court of a Member State before which proceedings have been brought by mutual agreement by the holders of parental responsibility ceases following a final judgment in those proceedings or if that jurisdiction continues beyond the delivery of that judgment.

#### The relevance and admissibility of the first question

- 31 As a preliminary point, the arguments raised both by the European Commission and by the Spanish Government questioning the relevance and the admissibility of the first question must be rejected. The Commission submits, in its written observations, that it is apparent from the order of 29 February 2012 that the Juzgado de Primera Instancia, Torrox, declared that it did not have jurisdiction under Article 12(3) of Regulation No 2201/2003 and that that order must be recognised by the referring court, under Article 21 of that regulation.
- 32 The Spanish Government submits that the case in the main proceedings concerns the recognition and enforcement of the decision of 20 October 2010 and the prohibition on review as to substance, within the meaning of Articles 21, 26, 41 and 47 of Regulation No 2201/2003, as the mother’s application seeking the variation of the agreement of 21 July 2010 and of that decision was lodged less than two months after the adoption of that decision.
- 33 However, first, as pointed out at the hearing by the Spanish Government and the parents, and as conceded, in essence, by the Commission, there is nothing to suggest that the order of 29 February 2012 includes any decision relating to the jurisdiction of the Spanish court as to substance, which must be recognised by the referring court under Article 21 of Regulation No 2201/2003.
- 34 Secondly, as submitted at the hearing by the mother and the Commission, it must be held that the case in the main proceedings and the first question do not, contrary to what the Spanish Government submits, relate to the recognition and enforcement of the decision of 20 October 2010 and the prohibition on review as to the substance thereof, within the meaning of Articles 21, 26, 41 and 47 of Regulation No 2201/2003, but whether the referring court has jurisdiction in matters of parental responsibility under Article 8(1) of that regulation.
- 35 In particular, it should be noted that any question relating to the merits of the mother’s application, or to its possible vexatiousness, brought before the courts of England and Wales less than two months after the decision of 20 October 2010 had been delivered and seeking a variation of the terms of the agreement of 21 July 2010 and, accordingly, a replacement of that decision, must be assessed, pursuant to Articles 8 to 15 of Regulation No 2201/2003, by the court that has jurisdiction in matters of parental responsibility.

36 In addition, given that in the present case it is not disputed that, on the date of delivery of the present judgment, no subsequent decision relating to parental responsibility has been taken by a court in respect of S. and that the decision of 20 October 2010 has accordingly been neither amended or replaced, it must be stated that the decision of 20 October 2010 remains, as of that date, fully enforceable.

#### Substance

37 With respect to the interpretation of Article 12(3) of Regulation No 2201/2003, it should be recalled that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment in *Van Buggenhout and Van de Mierop*, C-251/12, EU:C:2013:566, paragraph 26 and the case-law cited).

38 In that regard, it should be noted that the jurisdiction of a court must be established, according to Articles 8(1) and 12(3) of Regulation No 2201/2003, ‘at the time the court is seised’. In that regard, Article 16 of that regulation states that a court is deemed to be seised of a dispute, in principle, ‘at the time when the document instituting the proceedings ... is lodged with the court’.

39 In addition, for the purposes of a prorogation of jurisdiction, Article 12(3)(b) of Regulation No 2201/2003 requires in particular that, at the time the court is seised, the jurisdiction of the courts of a Member State other than that of habitual residence has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings.

40 It therefore follows from the wording of Articles 8(1) and 12(3) of that regulation that the jurisdiction of a court in matters of parental responsibility must be verified and established in each specific case, where a court is seised of proceedings, which implies that it does not continue after pending proceedings have been brought to a close.

41 As to the context of which Articles 8(1) and 12(3) of Regulation No 2201/2003 form part, recital 12 in the preamble to that regulation states that jurisdiction should lie in the first place with the Member State of the child’s habitual residence. In accordance with that recital, Article 8(1) of that regulation provides that the general jurisdiction in matters of parental responsibility is to be established on the basis of that residence.

42 Pursuant to recital 12 and Article 8(2) of Regulation No 2201/2003, jurisdiction other than that general jurisdiction is to be accepted only in certain cases in which the residence of the child changes, as provided for in particular in Article 9 of that regulation, or following an agreement made between the holders of parental responsibility, as referred to in Article 12(3) of that regulation.

43 In addition, Article 9(1) of Regulation No 2201/2003 makes it clear that, in the event of a change in the habitual residence of the child, the courts of the Member State of the child’s former habitual residence shall retain jurisdiction only for the purpose of modifying a judgment issued by those courts before the child moved, and in any event, shall not retain that jurisdiction beyond a period of three months.

44 With respect to the objectives pursued by Regulation No 2201/2003, it should be noted that recital 12 in the preamble thereto provides that the grounds of jurisdiction established in that regulation in matters of parental responsibility are shaped in the light of the best interests of the child, in particular on the criterion of proximity, and that one of the conditions set out in Article 12(3)(b) of that regulation requires that any prorogation of jurisdiction in accordance with that provision be carried out in the light of those interests.



- 45 It follows that jurisdiction in matters of parental responsibility must be determined, above all, in the best interests of the child.
- 46 As has been correctly noted by the mother, by the Government of the United Kingdom and by the Commission, while a prorogation of jurisdiction accepted by the holders of parental responsibility of a young child for specific proceedings may be considered as being in the best interests of that child, it cannot be accepted that, in every case, such a prorogation of jurisdiction remains — beyond the end of the proceedings in respect of which that jurisdiction was prorogued and throughout the childhood of the person concerned — in that person's best interests.
- 47 Accordingly, it must be held that, where a court is seised of proceedings in accordance with Article 12(3) of Regulation No 2201/2003, the best interests of the child can be safeguarded only by a review, in each specific case, of the question whether the prorogation of jurisdiction which is sought is consistent with those best interests.
- 48 In addition, since Article 12(3) seeks to allow the holders of parental responsibility, by mutual agreement and subject to certain other conditions, to bring proceedings before a court in relation to matters pertaining to parental responsibility for the assessment of which that court does not, in principle, have jurisdiction, it cannot be assumed that that agreement will continue, in all cases, after those proceedings have been brought to a close or in relation to other matters which may come to light subsequently.
- 49 It must accordingly be held that a prorogation of jurisdiction, on the basis of Article 12(3) of Regulation No 2201/2003, is valid only in relation to the specific proceedings for which the court whose jurisdiction is prorogued is seised and that that jurisdiction comes to an end, in favour of the court benefiting from a general jurisdiction under Article 8(1) of that regulation, following the final conclusion of the proceedings from which the prorogation of jurisdiction derives.
- 50 In the light of all of the foregoing considerations, the answer to the first question referred is that jurisdiction in matters of parental responsibility, which has been prorogued, under Article 12(3) of Regulation No 2201/2003, in favour of a court of a Member State before which proceedings have been brought by mutual agreement by the holders of parental responsibility, ceases following a final judgment in those proceedings.

### *The second question*

- 51 In view of the Court's reply to the first question, it is not necessary to rule on the second question which concerns the situation in which the jurisdiction in matters of parental responsibility, prorogued under Article 12(3) of Regulation No 2201/2003, continues beyond the final conclusion of the proceedings based on that prorogation of jurisdiction.

### **Costs**

- 52 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 (Second Chamber) hereby rules:

**Jurisdiction in matters of parental responsibility which has been prorogued, under Article 12(3) 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, in favour of a court of a Member State before which proceedings have been brought by mutual agreement by the holders of parental responsibility ceases following a final judgment in those proceedings.**

[Signatures]

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\* Language of the case: English.