

— in order to ascertain whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term 'staying' within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.

(<sup>1</sup>) OJ C 107, 26.4.2008.

**Judgment of the Court (Third Chamber) of 11 July 2008  
(reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas, Republic of Lithuania) — Proceedings brought by Inga Rinau**

(Case C-195/08 PPU) (<sup>1</sup>)

**(Judicial cooperation in civil matters — Jurisdiction and enforcement of judgments — Enforcement in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Application for non-recognition of a decision requiring the return of a child wrongfully retained in another Member State — Urgent preliminary ruling procedure)**

(2008/C 223/30)

Language of the case: Lithuanian

## Referring court

Lietuvos Aukščiausiasis Teismas, Lithuania

## Party to the main proceedings

Inga Rinau

## Re:

Reference for a preliminary ruling — Lietuvos Aukščiausiasis Teismas — Interpretation of Articles 21, 23, 24, 31(1), 40(2) and 42 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) — Application for non-recognition in Member State A of a decision delivered by a court in Member State B ordering the return of a child, who is regarded as being unlawfully held by her mother in Member State A, to her father, who is resident in Member State B and has been awarded custody of the child

## Operative part of the judgment

1. Once a non-return decision has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 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, that that decision has been suspended, overturned, set aside or, in any event, has not become *res judicata* or has been replaced by a decision ordering return, in so far as the return of the child has not actually taken place. Since no doubt has been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the Regulation, opposition to the recognition of the decision ordering return is not permitted and it is for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child.
2. Except where the procedure concerns a decision certified pursuant to Articles 11(8) and 40 to 42 of Regulation No 2201/2003, any interested party can apply for non-recognition of a judicial decision, even if no application for recognition of the decision has been submitted beforehand.
3. Article 31(1) of Regulation No 2201/2003, in so far as it provides that neither the person against whom enforcement is sought, nor the child is, at this stage of the proceedings, entitled to make any submissions on the application, is not applicable to proceedings initiated for non-recognition of a judicial decision if no application for recognition has been lodged beforehand in respect of that decision. In such a situation, the defendant, who is seeking recognition, is entitled to make such submissions.

(<sup>1</sup>) OJ C 171, 5.7.2008.

**Appeal brought on 22 May 2008 by Philippe Guigard against the judgment of the Court of First Instance (Third Chamber) delivered on 11 March 2008 in Case T-301/05 Guigard v Commission**

(Case C-214/08 P)

(2008/C 223/31)

Language of the case: French

## Parties

**Appellant:** Philippe Guigard (represented by: S. Rodrigues and C. Bernard-Glanz)

**Other party to the proceedings:** Commission of the European Communities