



## Reports of Cases

**Case C-4/14**

**Christophe Bohez**

**v**

**Ingrid Wiertz**

(Request for a preliminary ruling from the Korkein oikeus)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Articles 1(2) and 49 — Jurisdiction and the enforcement of judgments in civil and commercial matters — Matters excluded — Family law — Regulation (EC) No 2201/2003 — Article 47(1) — Jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility — Judgment concerning rights of access which imposes a periodic penalty payment — Enforcement of that penalty payment)

Summary — Judgment of the Court (First Chamber), 9 September 2015

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Scope — Matters excluded — Status and legal capacity of natural persons — Judgment imposing a penalty payment in an action to enforce rights of access — Exclusion from scope — Judgment falling within the scope of Regulation No 2201/2003*

*(Council Regulations No 44/2001, Art. 1(2)(a), and No 2201/2003)*

2. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003 — Recognition and enforcement — Judgment imposing a penalty payment in an action to enforce rights of access — Recovery of a penalty payment falling under the same scheme of enforcement as the judgment on rights of access*

*(Council Regulation No 2201/2003, Arts 28(1), 41(1), and 47(1))*

3. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003 — Recognition and enforcement — Judgment imposing a penalty payment in an action to enforce rights of access — Enforcement — Condition — Amount finally determined by the courts of the Member State of origin*

*(Council Regulation No 2201/2003)*

1. Article 1 of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that regulation does not apply to the enforcement in a Member State of a penalty payment which is imposed in a judgment, given in another Member State, concerning rights of custody and rights of access in order to ensure that the holder of the rights of custody complies with those rights of access.

A penalty payment of that kind is ancillary to the obligation of the holder of the rights of custody to cooperate in giving effect to the rights of access awarded in the same judgment.

Article 1(2)(a) of Regulation No 44/2001 expressly excludes from the scope of that regulation the status of natural persons, a notion which encompasses the exercise of parental responsibility over the person of a child.

Consequently, the penalty payment whose enforcement is sought is an ancillary measure which serves to protect a right which falls not within the scope of Regulation No 44/2001, but rather within that of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation No 1347/2000.

(see paras 35-37, 39, 40, operative part 1)

2. Recovery of a penalty payment — a penalty which the court of the Member State of origin that gave judgment on the merits with regard to rights of access has imposed in order to ensure the effectiveness of those rights — forms part of the same scheme of enforcement as the judgment concerning the rights of access that the penalty safeguards and the latter must therefore be declared enforceable in accordance with the rules laid down by Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation No 1347/2000.

Such a penalty payment cannot be considered in isolation as a self-standing obligation, but must be considered together with the rights of access which it serves to protect and from which it cannot be dissociated. Recovery of the penalty payment must therefore fall under the same scheme of enforcement as the rights of access which are to be safeguarded, namely the rules laid down in Articles 28(1) and 41(1) of Regulation No 2201/2003.

If the scheme of enforcement of penalty payments were separated from the scheme applicable to rights of access so as to bring it within the ambit of the enforcement procedure itself, which, under Article 47(1) of Regulation No 2201/2003, is governed by the law of the Member State of enforcement, that would amount to allowing the court of that State to verify whether there has been a breach of rights of access.

Such a review, which would be conducted in accordance with the rules of the State of enforcement and would entail an assessment, by the court of that State, of the circumstances of the case, would run counter to the intention of the EU legislature to establish, in respect of judgments given in that sphere, a uniform and simplified scheme of enforcement, which does not permit any interference in the substance of the case by the court dealing with enforcement and is based on the trust placed in the court of the State of origin as the court designated as having jurisdiction to take the decision relating to rights of access.

(cf. points 49-53, operative part 2)

3. In the context of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation No 1347/2000, a foreign judgment which orders a penalty payment is enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

In the event that the holder of rights of access granted in a Member State makes an application — on the basis that effect has not been given to those rights — for enforcement in another Member State of a penalty payment whose amount has not been finally determined by the court of the State of origin, determination of the final sum to be paid entails a review of the breaches alleged by the holder of the

rights of access. Such a review, which is of the utmost importance in terms of the best interests of the child, entails not only establishing the number of non-appearances of the child, but also an assessment of the reasons for those breaches. Only the court of the Member State of origin, as the court having jurisdiction as to the substance of the matter, is entitled to make assessments of that kind.

Consequently, in such a situation, it is for the beneficiary of the penalty payment to use the procedural remedies available in the Member State of origin to obtain a document quantifying the final amount of the penalty.

(see paras 59-61, operative part 3)