



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

12 November 2014*

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 12(3) — Child whose parents are not married — Prorogation of jurisdiction — No other related proceedings pending — Acceptance of jurisdiction — Challenge to the jurisdiction of a court by a party who has made an application to that court)

In Case C-656/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Czech Republic), made by decision of 12 November 2013, received at the Court on 12 December 2013, in the proceedings

L

v

M,

interveners:

R,

K,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader, E. Jarašiūnas (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr M, by E. Zajíčková, advokátka,

— R and K, by Z. Kapitán, advokát,

* Language of the case: Czech.

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
— the Polish Government, by B. Majczyna, acting as Agent,
— the European Commission, by A.-M. Rouchaud-Joët and J. Hradil, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of 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 (OJ 2003 L 338, p. 1).
- 2 The reference has been made in proceedings between Ms L, the mother of the children R and K, and Mr M, the father of those children, concerning the custody of those children, who are with their mother in Austria, whereas their father lives in the Czech Republic.

Legal context

European Union law

Regulation No 2201/2003

- 3 Recitals 5 and 12 in the preamble to Regulation No 2201/2003 state:
'(5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.
...
(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.'
- 4 Article 1 of Regulation No 2201/2003 defines the scope of the regulation. It provides, in particular:
'1. This Regulation shall apply ... in civil matters relating to:
...
(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

(a) rights of custody and rights of access;

...

3. This Regulation shall not apply to:

...

(e) maintenance obligations;

...'

5 Article 2(7) of Regulation No 2201/2003 defines, for the purposes of the regulation, the term 'parental responsibility' as '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'; the term 'shall include rights of custody and rights of access'.

6 Chapter II of Regulation No 2201/2003, 'Jurisdiction', consists of three sections. Section 1 of the chapter, 'Divorce, legal separation and marriage annulment', comprises Articles 3 to 7 of the regulation. Article 3 sets out the criteria for determining, primarily, the courts of the Member States with jurisdiction in matters relating to divorce, legal separation or marriage annulment. Article 7 deals with residual jurisdiction in matters relating to divorce, legal separation and marriage annulment.

7 Section 2 of Chapter II of Regulation No 2201/2003, concerning jurisdiction in matters of parental responsibility, consists of Articles 8 to 15. Article 8, '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 be subject to the provisions of Articles 9, 10 and 12.'

8 Article 12 of that regulation, 'Prorogation of jurisdiction', provides in paragraph 1 that '[t]he courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application' where the conditions it lays down are satisfied.

9 Article 12(2) of the regulation provides:

'The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.'

10 In accordance with Article 12(3) of the regulation:

‘The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 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.’

11 Article 15 of the regulation, ‘Transfer to a court better placed to hear the case’, sets out the conditions under which, by way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may transfer the case, or a specific part thereof, to a court of another Member State with which the child has a particular connection, which they consider would be better placed to hear the case.

12 Article 16 of the regulation, ‘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 applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

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 applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.’

Regulation (EC) No 4/2009

13 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1, corrigendum OJ 2011 L 131, p. 26) applies, in accordance with Article 1(1), ‘to maintenance obligations arising from a family relationship, parentage, marriage or affinity’.

14 Article 3 of Regulation No 4/2009, ‘General provisions’, reads as follows:

‘In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

... or

(d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.’

Czech law

15 Paragraph 39(1) of Law No 97/1963 on private and procedural international law provides:

‘In matters of the upbringing and maintenance of minors and in other matters concerning them, if they are Czechoslovak citizens, the Czechoslovak courts have jurisdiction, even where they live abroad. ...’

16 Paragraph 104(1) of the Civil Procedure Code provides:

‘If the conditions for conducting proceedings are not met and the defect cannot be remedied, the court shall discontinue the proceedings. If the matter does not fall within the jurisdiction of the courts or if other proceedings are to come first, the court shall transfer the matter, once the order discontinuing the proceedings has binding force, to the competent body; the legal effects linked to the bringing of the claim (application to initiate proceedings) shall however be maintained.’

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

17 According to the order for reference, Ms L and Mr M, an unmarried couple, have two children, R and K. The two children were born in the Czech Republic and are nationals of that State. Until February 2010 the parents and their children lived in the Czech Republic. From February 2010 Ms L worked in Austria, and the children lived alternately with their mother and their father, who lives and works in Český Krumlov (Czech Republic).

18 On 20 May 2012 Ms L registered the children as permanently resident in Austria, and in September of that year she informed Mr M that they would not return to the Czech Republic. The children were then attending school in Austria. Whether the children moved to Austria with the consent of Mr M is in dispute in the custody proceedings.

19 On 26 October 2012 Mr M made an application to the Okresní soud v Českém Krumlově (District Court, Český Krumlov) for the ‘arrangement of relations with minor children’ with a view to being granted custody of the children and maintenance.

20 On 28 October 2012 Mr M, in breach of his agreement with Ms L, did not return the children, who were visiting him, to her.

21 On 29 October 2012 Ms L for her part made an application to the Okresní soud v Českém Krumlově for custody of the children and maintenance. She later made a similar application to the Austrian courts.

22 On 1 November 2012, on the basis of a provisional measure adopted by the Okresní soud v Českém Krumlově, the children were returned to their mother in Austria, and since then have attended school there. By order of 12 December 2012, the Krajský soud v Českých Budějovicích (Regional Court, České Budějovice) (Czech Republic) confirmed the provisional measure.

23 By order of 1 February 2013, the Okresní soud v Českém Krumlově found that it lacked jurisdiction and terminated the proceedings in accordance with Paragraph 104(1) of the Civil Procedure Code, on the ground that, as the children were resident in Austria on the date of initiating proceedings, the Austrian courts had jurisdiction under Article 8(1) of Regulation No 2201/2003.

24 On 19 March 2013 the Austrian central body received a request, on Mr M’s initiative, for the return of the children in accordance with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (*United Nations Treaty Series*, vol. 1343, No 22514).

- 25 By order of 11 April 2013, the Krajský soud v Českých Budějovicích varied the order of the Okresní soud v Českém Krumlově of 1 February 2013 so that the proceedings were not terminated. The Krajský soud found that the international jurisdiction of the Czech courts was established in accordance with Article 12(3) of Regulation No 2201/2003, since the children had a substantial connection with the Czech Republic, both parents had accepted the international jurisdiction of the Czech courts, as had the children's guardian subsequently appointed in the proceedings, and jurisdiction of the Okresní soud v Českém Krumlově was in the best interests of the children.
- 26 With respect more particularly to the question of acceptance of the international jurisdiction of the Czech courts, the Krajský soud v Českých Budějovicích observed that Mr M's application of 26 October 2012 had been made to a Czech court; that on 29 October 2012 Ms L had herself made an application to the same court; and that it was only later that she had argued that Mr M should have brought proceedings in the Austrian courts, and had made an application to an Austrian court.
- 27 Ms L appealed on a point of law to the referring court against the order of the Krajský soud v Českých Budějovicích, requesting it to suspend the enforcement of the order. That request was granted by decision of 31 July 2013.
- 28 In support of her appeal, Ms L argues in particular that the condition of the acceptance of the international jurisdiction of the Czech courts laid down in Article 12(3) of Regulation No 2201/2003 is not satisfied in this case. She submits that she made her application to the Okresní soud v Českém Krumlově on the advice of the Czech Office for the Protection of the Social Rights of Children, because she did not know where her children were. She also applied to the competent authorities in Austria, and, once she was aware of all the facts, on 31 October 2012, she clearly stated that she did not accept the international jurisdiction of the Czech courts.
- 29 The referring court observes, on the one hand, that according to an interpretation which is admittedly very restrictive but allows full effect to be given to Article 15 of Regulation No 2201/2003, it might be considered that Article 12(3) of that regulation, like Article 12(1), allows prorogation of jurisdiction only in favour of the court already seised of proceedings for divorce or annulment of marriage, where its jurisdiction is based on Article 7 of the regulation. On the other hand, it is conceivable that Article 12(3) can apply even where there are no other proceedings related to the proceedings concerning the custody of the children.
- 30 The referring court further raises the question whether it may be considered that, in the circumstances of the present case, there was 'acceptance expressly or otherwise in an unequivocal manner' of the jurisdiction of the Czech courts on the part of Ms L. It states that the Krajský soud v Českých Budějovicích linked its conclusion that Ms L had accepted the jurisdiction of the Czech courts with the application she made to the Krajský soud v Českém Krumlově on 29 October 2012. It observes, however, that it does not find such an expression of will to be unequivocal. In particular, it observes that it appears credible in the light of the circumstances of the case that Ms L made an application to the Okresní soud v Českém Krumlově for the sole purpose of obtaining information about the children. It therefore takes the view that there cannot be such an acceptance in this case. It also notes that, on taking the first step required of her in the proceedings brought by Mr M, Ms L contested the jurisdiction of the court seised.
- 31 Since it found that the Court has not yet ruled on the interpretation of Article 12(3) of Regulation No 2201/2003, the Nejvyšší soud (Supreme Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Must Article 12(3) of [Regulation No 2201/2003] be interpreted as establishing jurisdiction over proceedings concerning parental responsibility even where no other related proceedings (that is, "proceedings other than those referred to in paragraph 1") are pending?

2. In the event of an affirmative answer to Question 1:

Must Article 12(3) of [Regulation No 2201/2003] be interpreted as meaning that [“]acceptance expressly or otherwise in an unequivocal manner[”] includes also the situation in which the party who has not initiated proceedings makes a separate application for the initiation of proceedings in the same case but immediately on doing the first act required of him objects that the court lacks jurisdiction in the proceedings previously started on the application by the other party?’

Procedure before the Court

- 32 At the request of the referring court, the designated Chamber examined the need to deal with the present case under the urgent preliminary ruling procedure provided for in Article 107 of the Court’s Rules of Procedure. After hearing the Advocate General, the Chamber decided not to accede to that request.
- 33 By decision of the President of the Court of 8 January 2014, the present request for a preliminary ruling was given priority pursuant to Article 53(3) of the Rules of Procedure.

Consideration of the questions referred

- 34 It should be recalled, as a preliminary point, that in accordance with Article 2(7) of Regulation No 2201/2003 the concept of parental responsibility covers all rights and duties relating to the person or the property of a child which are given, inter alia, to a legal person by judgment or by operation of law, and includes rights of custody and rights of access. Since Ms L and Mr M are in dispute in particular over the right of custody of their children, the dispute in the main proceedings falls within the scope of that regulation, in accordance with Article 1(1) and (2)(a) of the regulation.
- 35 The fact that the main proceedings also concern an application for maintenance makes no difference in this respect. It is true that under Article 1(3)(e) of Regulation No 2201/2003 maintenance obligations are excluded from the scope of that regulation. However, Article 3(d) of Regulation No 4/2009 provides that jurisdiction in matters relating to maintenance obligations in Member States may lie with the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties. In accordance with that provision, the court which has jurisdiction under Article 12(3) of Regulation No 2201/2003 will, in principle, also have jurisdiction to hear an application for maintenance which is ancillary to the parental responsibility proceedings pending before it.

Question 1

- 36 By its first question, the referring court is essentially asking whether Article 12(3) of Regulation No 2201/2003 must be interpreted as allowing, for the purposes of proceedings in matters of parental responsibility, the jurisdiction of a court of a Member State which is not that of the child’s habitual residence to be established even where no other proceedings are pending before the court chosen.
- 37 Mr M, the representative of R and K, and the Czech and Polish Governments submit that this question should be answered in the affirmative. The European Commission, on the other hand, submits that it should be answered in the negative, arguing that the pending proceedings to which the proceedings concerning parental responsibility are related must be proceedings different from those specified in Article 12(1) of Regulation No 2201/2003.

- 38 According to settled case-law of the Court, in interpreting a provision of European Union 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 (judgments in *Merck*, 292/82, EU:C:1983:335, paragraph 12, and *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 33 and the case-law cited).
- 39 On this point, it should be recalled that Article 12(3) of Regulation No 2201/2003 provides that the courts of a Member State have jurisdiction in matters of parental responsibility ‘in proceedings other than those referred to in paragraph 1’ of that article where, first, the child has a substantial connection with that Member State, in particular where one of the holders of parental responsibility is habitually resident there or the child is a national of the State, and, secondly, their jurisdiction 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. Paragraph 1 of the article states that the courts of the Member State exercising jurisdiction by virtue of Article 3 of the regulation on an application for divorce, legal separation or marriage annulment are to have jurisdiction in any matter relating to parental responsibility connected with that application, where the conditions it lays down are satisfied.
- 40 The wording of Article 12(3) of Regulation No 2201/2003 thus does not, in itself, make it possible to determine whether or not, for the prorogation of jurisdiction provided for by that provision to be capable of application, it is necessary that the court in whose favour the prorogation of jurisdiction is sought is already seised of other proceedings.
- 41 It must be observed, however, as regards the context in which Article 12(3) of Regulation No 2201/2003 occurs, that that provision, together with Article 12(1) of the regulation, is one of the two possibilities of prorogation of jurisdiction in matters of parental responsibility provided for by that regulation.
- 42 As regards Article 12(1) of Regulation No 2201/2003, it is clear from the wording of that provision that the possibility of prorogation of jurisdiction it provides for can operate only in favour of the courts of the Member State exercising jurisdiction by virtue of Article 3 of the regulation on an application for divorce, legal separation or marriage annulment. Article 12(2), for its part, specifies the time at which the jurisdiction conferred in Article 12(1) is to cease, namely when the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final, or, in cases where proceedings in relation to parental responsibility are still pending on that date, when a judgment in these proceedings has become final, or, in either case, when the proceedings have come to an end for another reason.
- 43 No provision equivalent to Article 12(2) is laid down for the possibility of prorogation of jurisdiction provided for by Article 12(3) of Regulation No 2201/2003.
- 44 Moreover, the Court has previously held 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 (judgment in *E*, C-436/13, EU:C:2014:2246, paragraph 50). That implies that the jurisdiction of the court chosen may be prorogued even to hear those parental responsibility proceedings alone.
- 45 It follows from the above that the prorogation of jurisdiction provided for in Article 12(3) of Regulation No 2201/2003 in matters of parental responsibility may be applied without it being necessary for those proceedings to be related to other proceedings already pending before the court in whose favour the prorogation of jurisdiction is sought.

- 46 It should be noted that that interpretation is the only one capable of not infringing the effectiveness of that provision. To restrict its scope to situations in which proceedings in matters of parental responsibility may be related to other proceedings already pending would substantially reduce the possibilities of having recourse to that prorogation, bearing in mind that the need to bring proceedings in matters of parental responsibility may arise independently of any other proceedings.
- 47 That interpretation is also the only one capable of guaranteeing that the objectives pursued by Regulation No 2201/2003 are respected.
- 48 First, as stated in recital 12 in the preamble, the grounds of jurisdiction established by Regulation No 2201/2003 are shaped in the light of the best interests of the child, in particular of the criterion of proximity. It follows that the regulation proceeds from the idea that the best interests of the child must come first (see, to that effect, judgment in *Rinau*, C-195/08 PPU, EU:C:2008:406, paragraph 51). As stated in paragraph 46 above, limiting the possibility of having recourse to the prorogation of jurisdiction provided for in Article 12(3) of Regulation No 2201/2003 to cases in which the proceedings in matters of parental responsibility may be related to other proceedings would exclude the possibility of having recourse to that prorogation in numerous situations, even where that prorogation of jurisdiction might be in the best interests of the child concerned.
- 49 It should be emphasised here that, as is apparent from Article 12(3)(b) of Regulation No 2201/2003 — which in any event makes the applicability of the prorogation of jurisdiction provided for by that paragraph conditional not only on the acceptance, expressly or otherwise in an unequivocal manner, of prorogation by all the parties to the proceedings at the time the court is seised, but also on the jurisdiction of the courts of the Member State chosen being in the best interests of the child — recourse to that prorogation cannot in any case be contrary to those best interests.
- 50 Secondly, recital 5 in the preamble to Regulation No 2201/2003 states that, in order to ensure equal treatment for all children, the regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with matrimonial proceedings. Excluding any possibility of prorogation of jurisdiction in matters of parental responsibility for the sole reason that those proceedings cannot be related to other proceedings already pending would interfere with the full achievement of that objective. That would be the case, in particular, if, as the referring court suggests, the expression ‘proceedings other than those referred to in paragraph 1’ within the meaning of Article 12(3) of the regulation were understood as referring to applications for divorce, legal separation or marriage annulment for which the jurisdiction of the courts of a Member State is established not under Article 3 of that regulation but under another rule of jurisdiction laid down by the regulation. Such an interpretation would exclude any possibility of prorogation of jurisdiction pursuant to Article 12(3) for questions of parental responsibility concerning the children of parents who were never married or are already divorced or separated or have had their marriage annulled, which would be contrary to the objective of equal treatment for all children.
- 51 Moreover, the interpretation adopted in paragraph 45 above is not such as to harm the effectiveness of Article 15 of Regulation No 2201/2003, as the referring court fears, since that article states that it applies only ‘by way of exception’. It cannot therefore make good the defects, in terms of achieving the objectives pursued by Regulation No 2201/2003, which would follow from an interpretation of Article 12(3) of the regulation excluding the applicability of that provision where there are no proceedings already pending to which the proceedings in matters of parental responsibility can be related.
- 52 Having regard to all the above considerations, the answer to Question 1 is that Article 12(3) of Regulation No 2201/2003 must be interpreted as allowing, for the purposes of proceedings in matters of parental responsibility, the jurisdiction of a court of a Member State which is not that of the child’s habitual residence to be established even where no other proceedings are pending before the court chosen.

Question 2

- 53 By its second question, the referring court asks essentially whether Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that the jurisdiction of the court seised by one party of proceedings in matters of parental responsibility has been ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of that provision where the defendant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of that court.
- 54 Mr M and the representative of R and K consider that this question should be answered in the affirmative, while the Czech Government and the Commission take the contrary view.
- 55 According to the actual wording of Article 12(3)(b) of Regulation No 2201/2003, the jurisdiction of the court chosen must have ‘been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised’. Article 16 of that regulation states that a court is deemed to be seised, in principle, at the time when the document instituting the proceedings or an equivalent document is lodged with the court.
- 56 The clear wording of that provision, read in the light of Article 16, thus requires the existence to be shown of an agreement, express or at least unequivocal, on the prorogation of jurisdiction between all the parties to the proceedings, at the latest at the time when the document instituting the proceedings or an equivalent document is lodged with the court chosen.
- 57 That manifestly cannot be the case where the court in question is seised on the initiative of only one of the parties to the proceedings, another party to the proceedings brings other proceedings before the same court at a later date, and that other party, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of the court seised.
- 58 It should be added 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 assured only by an examination, in each individual case, of whether the prorogation of jurisdiction sought is in accordance with those interests, and that prorogation of jurisdiction on the basis of Article 12(3) of Regulation No 2201/2003 is valid only for the specific proceedings of which the court whose jurisdiction is prorogued is seised (see, to that effect, judgment in *E*, EU:C:2014:2246, paragraphs 47 and 49).
- 59 It follows from the foregoing that the answer to Question 2 is that Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that it cannot be considered that the jurisdiction of the court seised by one party of proceedings in matters of parental responsibility has been ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of that provision where the defendant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of that court.

Costs

- 60 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 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, must be interpreted as allowing, for the purposes of proceedings in matters of parental responsibility, the jurisdiction of a court of a Member State which is not that of the child's habitual residence to be established even where no other proceedings are pending before the court chosen.**
2. **Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that it cannot be considered that the jurisdiction of the court seised by one party of proceedings in matters of parental responsibility has been 'accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings' within the meaning of that provision where the defendant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of that court.**

[Signatures]