



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

17 October 2018*ⁱ

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Article 8(1) — Jurisdiction in matters of parental responsibility — Concept of ‘habitual residence of the child’ — Requirement of physical presence — Detention of the mother and child in a third country against the will of the mother — Infringement of the fundamental rights of the mother and child)

In Case C-393/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court of Justice (England and Wales), Family Division, made by decision of 6 June 2018, received at the Court on 14 June 2018, in the proceedings

UD

v

XB

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President acting as President of the First Chamber, J.-C. Bonichot, E. Regan (Rapporteur), C.G. Fernlund and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the request of 6 June 2018 by the referring court, received at the Court on 14 June 2018, that the reference for a preliminary ruling be dealt with under an urgent procedure, in accordance with Article 107 of the Court’s Rules of Procedure,

having regard to the decision of 5 July 2018 of the First Chamber granting that request,

having regard to the written procedure and further to the hearing on 7 September 2018,

after considering the observations submitted on behalf of:

- UD, by C. Hames QC, B. Jubb, Barrister, J. Patel and M. Hussain, Solicitors,
- XB, by T. Gupta, QC, J. Renton, Barrister, and J. Stebbing, Solicitor,

* Language of the case: English.

- the United Kingdom Government, by S. Brandon, acting as Agent, and by M. Gration, Barrister,
- the Czech Government, by M. Smolek and A. Kasalická, acting as Agents,
- the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 8 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 UD, the mother of an infant girl born in Bangladesh on 2 February 2017 ('the child'), and XB, the father of that child, concerning applications made by UD for orders, first, that the child be made a ward of the referring court and, secondly, that she return with the child to the United Kingdom in order to participate in the proceedings before the referring court.

Legal context

- 3 Recitals 1 and 12 of Regulation No 2201/2003 state:
 - '(1) The European [Union] has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the [European Union] is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
 - ...
 - (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, entitled 'Scope', specifies the civil matters to which that regulation applies and those to which it does not apply.
- 5 Article 2 of the regulation, entitled 'Definitions', is worded as follows:
 - 'For the purposes of this Regulation:
 - ...
 - (4) the term "judgment" shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;

...'

- 6 Chapter II of that regulation, entitled 'Jurisdiction' contains, in Section 2 entitled 'Parental responsibility', Article 8, itself entitled 'General jurisdiction', which provides, in paragraph 1, the following:

'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.'

- 7 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.'

...'

- 8 Article 10 of that regulation, entitled 'Jurisdiction in cases of child abduction', provides:

'In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State ...'

- 9 Article 12 of that regulation lays down the conditions in which prorogation of jurisdiction under that regulation is possible.

- 10 Article 13 of that regulation, entitled 'Jurisdiction based on the child's presence', provides in paragraph 1:

'Where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the courts of the Member State where the child is present shall have jurisdiction.'

- 11 Article 14 of Regulation No 2201/2003 entitled 'Residual jurisdiction', is worded as follows:

'Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State.'

- 12 Article 15 of that regulation, entitled 'Transfer to a court better placed to hear the case', provides in paragraph 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.'

13 Article 21 of that regulation, entitled ‘Recognition of a judgment’, provides the following in paragraph 1:

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

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

14 The applicant in the main proceedings, and mother of the child, (‘the mother’) is a Bangladeshi national who, in 2013, entered into a marriage in Bangladesh with the defendant in the main proceedings, a British national who is the father of the child (‘the father’).

15 In June or July 2016, the mother entered the United Kingdom to live there with the father. She was granted a spousal visa by the United Kingdom Home Office valid from 1 July 2016 to 1 April 2019.

16 In December 2016, the father and the mother travelled to Bangladesh. The mother was heavily pregnant at the time. On 2 February 2017, the child was born in Bangladesh. The child has remained in Bangladesh since that time and consequentially has never been present in the United Kingdom.

17 In early January 2018, the father returned to the United Kingdom without the mother.

18 On 20 March 2018, the mother commenced proceedings in the referring court for an order that the child be made a ward of that court and an order that the mother and the child return to the United Kingdom in order to participate in the proceedings before that court. The mother submits that the referring court has jurisdiction to determine the dispute in the main proceedings. In that regard the mother claims, in particular, that, on the date she brought the matter before the referring court, the child was habitually resident in the United Kingdom. For his part, the father contests the jurisdiction of that court to make any decision with regard to the child.

19 The referring court states that it has not made any findings of fact in the main proceedings, since it considers it necessary first of all to resolve the issue of its jurisdiction to make a decision concerning the child. As regards that issue, the referring court is of the opinion that it must assess initially whether the child’s habitual residence is, for the purposes of Article 8(1) of Regulation No 2201/2003, in the United Kingdom. Only as a second step, if necessary, would that court examine whether it has another basis of jurisdiction to hear the dispute in the main proceedings.

20 According to the referring court, the interpretation, in the context of the main proceedings, of the concept of ‘habitual residence’ in Article 8(1) of Regulation No 2201/2003 raises issues which have not yet been examined by the Court, in particular whether physical presence is an intrinsic element of that concept. Furthermore, the father’s alleged coercion of the mother had the effect of her giving birth to the child in a third country. The father’s behaviour in that regard arguably amounts to a breach of the mother’s or the child’s rights. The mother’s position therefore raises the subsidiary issue of the effect on that concept of circumstances in which the child was born in a third country specifically due to the mother being unlawfully kept, through coercion, by the father in that State, where the holders of parental responsibility have no joint intention of residing in that State.

21 In those circumstances, the High Court of Justice (England and Wales), Family Division, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the physical presence of a child in a State an essential ingredient of habitual residence, within the meaning of Article 8 of [Regulation No 2201/2003]?’

(2) In circumstances where both parents are holders of Parental Responsibility, does the fact that a mother has been tricked to go to another state and then unlawfully detained by coercion or other unlawful act in that state by the father, leading to the mother being forced to give birth to a child in that state, have any impact on the answer to [the first question] in circumstances where there may have been a violation of the mother and/or child's human rights, pursuant to Articles 3 and 5 of the [Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950], or otherwise?'

The urgent procedure

- 22 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.
- 23 In support of its request, the referring court stated that the main proceedings concern a very young child, aged one year and two months at the date of the order for reference, and that any delay in the progress of those proceedings is detrimental to the best interest of that child.
- 24 The referring court stated further that, according to the mother's claims, which are not accepted by the father, she is currently detained unlawfully, through the father's coercion, in a village in Bangladesh without access to gas, electricity or clean water, without income and in a community that stigmatises her for being separated from the father. That court states that, in a case where its jurisdiction has been established and where the rights of the mother and child have been contravened by the father, it must act as quickly as possible, if necessary by adopting the measures needed to ensure that the child's interests are protected.
- 25 In that regard, it should be stated, in the first place, that the present reference for a preliminary ruling concerns the interpretation of Regulation No 2201/2003, which was adopted in particular on the basis of Article 61(c) EC, now Article 67 TFEU which is in Title V of Part Three of the TFEU, relating to the area of freedom, security and justice, so that the reference falls within the scope of the urgent preliminary ruling procedure defined in Article 107 of the Rules of Procedure (judgments of 9 October 2014, *C*, C-376/14 PPU, EU:C:2014:2268, paragraph 34; of 9 January 2015, *RG*, C-498/14 PPU, EU:C:2015:3, paragraph 36, and of 19 November 2015, *P*, C-455/15 PPU, EU:C:2015:763, paragraph 31).
- 26 In the second place, as regards the criterion relating to urgency, it is clear from the order for reference that, in the event that the father's coercion of the mother has been established, the child's current welfare would be seriously compromised. In such a situation, any delay in taking judicial decisions relating to the child would prolong the current situation and would thereby risk causing serious, possibly irreparable, harm to that child's development. In the event of a possible return to the United Kingdom, such a delay would also risk being detrimental to the child's integration in her new family and social environment.
- 27 In addition, the main proceedings concern a child whose very young age makes her stimulation and development particularly delicate.
- 28 Taking the foregoing into account, the First Chamber of the Court decided, on 5 July 2018, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

The jurisdiction of the Court

- 29 Although the government of the United Kingdom formally raises the inadmissibility of the present reference for a preliminary ruling, it is clear from its observations that it is, in fact, challenging the jurisdiction of the Court to answer the questions raised, since the present action concerns a potential conflict of jurisdiction between a Member State, in this instance the United Kingdom of Great Britain and Northern Ireland, and a third country, namely the People's Republic of Bangladesh.
- 30 In particular, that government claims that, in the light of Article 61(c) and Article 67(1) EC, on the basis of which Regulation No 2201/2003 was adopted, that regulation is intended to apply only to cross-border situations inside the European Union. In cross-border situations involving a Member State and a third country, such as the situation at issue in the main proceedings, national law applies.
- 31 In the first place, as regards the wording of the relevant provisions of Regulation No 2201/2003, it should be observed that Article 1 of that regulation, which defines its scope, specifies the civil matters to which that regulation applies and those to which it does not apply, without making reference to any limitation of the territorial scope of that regulation.
- 32 As regards Article 8(1) of Regulation No 2201/2003 itself, that provision states that the courts of a Member State are to have jurisdiction in matters of parental responsibility with reference to a child who is habitually resident in that Member State at the time when the matter is brought before the court concerned. Thus, nothing in that provision indicates that the application of the general rule of jurisdiction in matters of parental responsibility, which it establishes, is conditional on there being a legal relationship involving a number of Member States.
- 33 As the Advocate General observes in points 23 and 25 of his Opinion, it follows that, unlike certain provisions of Regulation No 2201/2003 concerning jurisdiction such as Articles 9, 10 and 15, the terms of which necessarily imply that their application is dependent on a potential conflict of jurisdiction between courts in a number of Member States, it does not follow from the wording of Article 8(1) of that regulation that that provision is limited to disputes relating to such conflicts.
- 34 In that regard, Article 8(1) of Regulation No 2201/2003 also differs from the rules governing recognition and enforcement laid down in that regulation.
- 35 In particular, the Court has already held that it clearly had no jurisdiction to answer questions referred for a preliminary ruling concerning the recognition of a decree of divorce issued in a third State and observed, *inter alia*, that, in accordance with Article 2(4) and Article 21(1) of Regulation No 2201/2003, that regulation is restricted to recognition of decisions delivered by a court of a Member State (order of 12 May 2016, *Sahyouni*, C-281/15, EU:C:2016:343, paragraphs 21, 22 and 33).
- 36 In contrast with the rules governing the recognition and enforcement of judicial decisions laid down in Regulation No 2201/2003, that regulation, as is apparent, in particular, from paragraphs 32 and 33 above, contains no provision which expressly limits the territorial scope of all the rules relating to jurisdiction laid down in that regulation.
- 37 In the second place, as regards the objective of Regulation No 2201/2003, it is clear from recital 1 that that regulation is intended to contribute to the objective that the European Union is to create an area of freedom, security and justice in which the free movement of persons is ensured. To that end, the European Union is to adopt, *inter alia*, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

- 38 By virtue of Article 61(c) EC, which is one of the legal foundations of Regulation No 2201/2003, and of Article 65 EC, now Article 67(3) and Article 81 TFEU respectively, the European Union must adopt measures in the field of judicial cooperation in civil matters having cross-border implications and in so far as is necessary for the proper functioning of the internal market.
- 39 Contrary to what the United Kingdom submits, in essence, such considerations do not have the consequence that the jurisdiction rule in Article 8(1) of Regulation No 2201/2003 must be regarded as applying only to disputes involving relations between the courts of Member States.
- 40 In particular, the uniform rules of jurisdiction contained in Regulation 2201/2003 are not intended to apply only to situations in which there is a real and sufficient link with the working of the internal market, by definition involving a number of Member States. In itself, the unification of the rules of jurisdiction introduced by that regulation certainly has the objective of eliminating obstacles to the functioning of the internal market which may derive from disparities between national legislations on the subject (see, by analogy, in relation to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters (OJ 1972 L 299, p. 32), as amended by successive conventions on the accession of new Member States to that convention, judgment of 1 March 2005, *Owusu*, C-281/02, EU:C:2005:120, paragraph 34).
- 41 In the light of the foregoing, it must be stated that the general jurisdiction rule provided for in Article 8(1) of Regulation No 2201/2003 may apply to disputes involving relations between the courts of a single Member State and those of a third country, and not only relations between courts of a number of Member States.
- 42 Therefore, the Court has jurisdiction to reply to the questions raised by the national court.

Substance

- 43 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 8(1) of Regulation No 2201/2003 must be interpreted to the effect that a child must have been physically present in a Member State in order to be regarded as habitually resident in that Member State, for the purposes of that provision. That court also asks whether circumstances such as those in the main proceedings, assuming that they are proven, that is to say, first, the fact that the father's coercion of the mother had the effect of her giving birth to their child in a third country where she has resided with that child ever since, and, secondly, the breach of the mother's or the child's rights, have any bearing in that regard.
- 44 The father and the European Commission maintain that the habitual residence of the child cannot be in a Member State in which the child has never been physically present, while the mother, the United Kingdom Government and the Czech Government are of the view that circumstances such as those in the main proceedings may justify the child being regarded as habitually resident in that State.
- 45 First of all, it must be observed that Regulation No 2201/2003 contains no definition of the concept of 'habitual residence'. The use of the adjective 'habitual' merely indicates that the residence must have a certain stability or regularity (judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 44).
- 46 According to settled case-law, it follows from the need for uniform application of EU 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 European Union, having regard to the context of the provision and the objective pursued by the legislation in question (judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 45 and the case-law cited).

- 47 The concept of ‘habitual residence’ is used in articles of Regulation No 2201/2003 which do not contain any express reference to the law of the Member States. It is therefore necessary to define that concept, peculiar to EU law, in the light of the context of the regulation’s provisions and the objective pursued by it (see, to that effect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 46).
- 48 In that regard, it is apparent from recital 12 of Regulation No 2201/2003 that that regulation was drawn up with the objective of meeting the best interests of the child, and to that end it favours the criterion of proximity. The EU legislature considered that the court geographically close to the child’s habitual residence is the court best placed to assess the measures to be adopted in the interests of the child. According to that recital, jurisdiction should lie in the first place with the Member State of the child’s habitual residence, except in certain cases of a change in the child’s residence or pursuant to an agreement between the holders of parental responsibility (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 51 and the case-law cited).
- 49 Article 8 of Regulation No 2201/2003 gives expression to that objective by establishing a general jurisdiction in relation to parental responsibility in favour of the courts of the Member State in which the child is habitually resident (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 52).
- 50 Moreover, as the court has explained on a number of occasions, in order to determine where a child is habitually resident, in addition to the physical presence of the child in a Member State, other factors must also make it clear that that presence is not in any way temporary or intermittent (judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraph 38; of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 49; of 9 October 2014, *C*, C-376/14 PPU, EU:C:2014:2268, paragraph 51; of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 60; of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 43, and of 28 June 2018, *HR*, C-512/17, EU:C:2018:513, paragraph 41).
- 51 The importance placed by the EU legislature on geographical proximity in order to determine the court which has jurisdiction in matters of parental responsibility is also apparent from Article 13(1) of Regulation 2201/2003 which bases the jurisdiction of a court of a Member State solely on the fact that the child is present, precisely when the child’s residence could not be qualified as ‘habitual’, for the purposes of Article 8(1) of that regulation, in any Member State and that that jurisdiction may not be determined on the basis of Article 12 of that regulation.
- 52 Thus, the Court has held that the recognition of a child’s habitual residence in a given Member State requires at least that the child has been physically present in that Member State (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 61).
- 53 It follows from the considerations set out in paragraphs 45 to 52 above that physical presence in the Member State in which the child is allegedly integrated is a condition which necessarily must be satisfied before assessing the stability of that presence and that ‘habitual residence’, for the purposes of Regulation No 2201/2003, may not be established in a Member State which the child has never been to.
- 54 That interpretation is supported by the position occupied by Article 8(1) of Regulation No 2201/2003 within the jurisdiction rules laid down by that regulation in matters of parental responsibility.
- 55 In the light of recital 12 of Regulation No 2201/2003, and as is apparent from paragraph 49 above, Article 8 of that regulation establishes the general rule of jurisdiction in matters of parental responsibility, so that that provision occupies a central position within the scheme of jurisdiction rules established by that regulation in that area.

- 56 Thus Article 8 of Regulation No 2201/2003 is supplemented by specific rules applicable, in particular, where the habitual residence of the child, present in a Member State, cannot be established and where jurisdiction cannot be determined on the basis of Article 12 of that regulation (Article 13), where no court of a Member State has jurisdiction pursuant to Articles 8 to 13 (Article 14) and, by way of an exception and in certain circumstances, where the court having jurisdiction transfers the case to the court of another Member State which it considers better placed to hear the case (Article 15) (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 56).
- 57 It follows that the fact that a dispute brought before a court of a Member State may not come within the scope of Article 8(1) of Regulation No 2201/2003 does not necessarily preclude that court from having jurisdiction in that dispute on another basis. In particular, even if the interpretation in paragraphs 52 and 53 above, that the child's physical presence in a Member State is a prerequisite for establishing habitual residence, has the consequence that, in a situation such as the one at issue in the main proceedings, it would not be possible to designate a court of a Member State as having jurisdiction under the provisions of that regulation, the fact remains, as the Commission observed, that it is open to every Member State, in accordance with Article 14 of that regulation, to confer jurisdiction on its own courts on the basis of rules of national law, departing from the criterion of proximity on which the provisions of that regulation are founded.
- 58 Furthermore, it follows from the provisions cited in paragraph 56 above, in particular Article 13(1) and Article 15(1) of Regulation No 2201/2003, that the EU legislature specifically envisaged, respectively, situations in which the habitual residence of a child may not be established and the transfer to a court better placed to hear the case of a child which is not necessarily the one referred to in Article 8(1) of that regulation, or the one referred to in Articles 9 to 14 of that regulation.
- 59 Consequently, neither the absence of the child's habitual residence, for the purposes of Article 8(1) of Regulation No 2201/2003, because that child is not physically present in a Member State of the European Union, nor the existence of courts of a Member State better placed to hear the cases of that child, even though the child never resided in that State, can establish the habitual residence of the child in a State in which that child has never been present.
- 60 Next, the situation at issue in the main proceedings, even if it were established, in which the father coerced the mother with the consequence that their child was born in Bangladesh and has resided there since birth, cannot call that interpretation into question.
- 61 It is true that, in the absence of that coercion, the child at issue in the main proceedings might have been born, according to the alleged intention of the mother, in the United Kingdom. The Court has already held that the intention of the person with parental responsibility to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or rental of accommodation in the host Member State, may constitute an indicator of the transfer of the habitual residence (judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 50 and the case-law cited).
- 62 However, in the absence of the child's physical presence in the Member State concerned, it is not possible, when interpreting the concept of 'habitual residence', to give greater weight to circumstances such as the intention of the parent who, in practice, has custody of the child, or the possible habitual residence of one or other parent in that Member State, at the expense of objective geographical considerations without disregarding the EU legislature's intention (see, by analogy, judgment of 28 June 2018, *HR*, C-512/17, EU:C:2018:513, paragraph 60).
- 63 The interpretation that the fact that the child concerned is not physically present in the Member State concerned precludes considerations such as those set out in the preceding paragraph of the present judgment from being taken into account is more consistent with the criterion of proximity, prioritised

by the EU legislature within Regulation No 2201/2003 precisely in order to ensure that the best interests of the child are taken into account (see, by analogy, judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 67).

- 64 Finally, the protection of the best interests of the child, guaranteed by Article 24 of the Charter of Fundamental Rights of the European Union and respect for the fundamental rights of the child, as laid down in Articles 4, 6 and 24 of that Charter, do not require an interpretation that differs from the one set out in paragraphs 52 and 53 above.
- 65 In the first place, as is apparent from paragraph 48 above, the protection of the best interests of the child was taken into consideration when Regulation No 2201/2003 was drafted, and that interest takes the form of the criterion of proximity adopted by that regulation.
- 66 In the second place, Regulation No 2201/2003 has already established a mechanism authorising Member States to protect the interests of a child even in the case of disputes which do not come under Article 8(1) of that regulation. In particular, as was recalled in paragraph 57 above, where no court of a Member State has jurisdiction under Articles 8 to 13 of that regulation, Article 14 stipulates that the Member States may, on a residual basis, confer jurisdiction on their courts under their national laws.
- 67 In the present case, it is clear from the file submitted to the Court that such a residual jurisdiction exists in the legal order of the United Kingdom in the form of the '*parens patriae* jurisdiction' of the courts of that Member State, where that rule of jurisdiction applies to British citizens at the discretion of the national courts.
- 68 It follows from those considerations that the best interests of the child do not call for an interpretation of Article 8(1) of Regulation No 2201/2003, such as the one proposed by the mother, the United Kingdom Government and the Czech Government, even in circumstances such as those in the main proceedings, since such an interpretation goes beyond the limits of the concept of 'habitual residence' laid down in Regulation No 2201/2003 and the role developed for that provision within the framework of the provisions of that regulation governing jurisdiction in matters of parental responsibility.
- 69 It follows that, in a case such as the one at issue in the main proceedings, neither the unlawful behaviour of one of the parents towards the other, with the consequence that their child was born in Bangladesh and has resided there since birth, nor the infringement of the fundamental rights of the mother or that child, assuming that those circumstances are proven, lead to the conclusion that the child could have habitual residence, for the purposes of Article 8(1) of Regulation No 2201/2003, in a Member State which she has never been to.
- 70 In the light of the foregoing, Article 8(1) of Regulation No 2201/2003 must be interpreted to the effect that a child must have been physically present in a Member State in order to be regarded as habitually resident in that Member State, for the purposes of that provision. Circumstances such as those in the main proceedings, assuming that they are proven, that is to say, first, the fact that the father's coercion of the mother had the effect of her giving birth to their child in a third country where she has resided with that child ever since, and, secondly, the breach of the mother's or the child's rights, do not have any bearing in that regard.

Costs

- 71 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 (First Chamber) hereby rules:

Article 8(1) 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 to the effect that a child must have been physically present in a Member State in order to be regarded as habitually resident in that Member State, for the purposes of that provision. Circumstances such as those in the main proceedings, assuming that they are proven, that is to say, first, the fact that the father's coercion of the mother had the effect of her giving birth to their child in a third country where she has resided with that child ever since, and, secondly, the breach of

the mother's or the child's rights, do not have any bearing in that regard.

Silva de Lapuerta

Bonichot

Regan

Fernlund

Rodin

Delivered in open court in Luxembourg on 17 October 2018.

A. Calot Escobar
Registrar

K. Lenaerts
President

i — The name set out in paragraph 25 has been replaced by letters following a request for anonymisation.