



## Reports of Cases

### ORDER OF THE COURT (Eighth Chamber)

10 July 2019\*

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 15 — Transfer of a case to a court of another Member State better placed to hear it — Exception to the general rule that the court for the place where the child is habitually resident has jurisdiction — Particular connection with another Member State — Evidence making it possible to determine the better placed court — Existence of different rules of law — Best interests of the child)

In Case C-530/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Ilfov (Regional Court, Ilfov, Romania), made by decision of 20 June 2018, received at the Court on 13 August 2018, in the proceedings

**EP**

v

**FO,**

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, C.G. Fernlund (Rapporteur) and L.S. Rossi, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- EP, by C.D. Giurgiu, avocat,
- FO, acting in person,
- the Romanian Government, by E. Gane, L. Lițu and by C. Canțâr, acting as Agents,
- the European Commission, by M. Wilderspin and A. Biolan, acting as Agents,

\* Language of the case: Romanian.

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 99 of the Rules of Procedure of the Court,

makes the following

### **Order**

- 1 This request for a preliminary ruling concerns the interpretation of Article 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 the context of proceedings between EP and FO concerning the award of custody of their minor child, the determination of the child's habitual residence and the payment of maintenance in respect of that child.

### **Legal context**

- 3 Recital 13 of Regulation No 2201/2003 states:

'In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. ...'

- 4 Article 8 of that regulation, entitled 'General jurisdiction', provides in paragraph 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.'

- 5 Article 15 of the regulation, entitled 'Transfer to a court better placed to hear the case', provides:

'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.'

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

- 6 EP, a Romanian national, married FO, a French national in 2005. A child was born from their union, in France on 13 October 2006.
- 7 EP and FO have been separated since 2013, and since then their child has been living with her mother in Romania.
- 8 On 13 January 2014, EP, the child's mother, filed a petition for dissolution of the marriage with the Judecătoria Buftea (Court of First Instance, Buftea, Romania), together with an application for custody of the child and the payment of maintenance by FO, the child's father.
- 9 FO raised a plea of lack of jurisdiction of the Romanian courts, arguing that Russian courts had jurisdiction, a plea of international *lis pendens* and a plea of inadmissibility. Furthermore, in the alternative, he filed a cross-petition for dissolution of the marriage on the grounds that EP was at fault, and applied for the exclusive right to exercise parental responsibility, custody of the child and the payment by EP of maintenance for the benefit of the child.
- 10 By order of 10 October 2014, the Judecătoria Buftea (Court of First Instance, Buftea) dismissed the three pleas raised by FO and by order of 12 January 2015 declared that the law applicable to the dispute in the main proceedings was the law of Romania.

- 11 On 8 June 2016, EP and FO finally filed a petition for divorce by mutual consent, but each party also applied for the unilateral right to exercise parental responsibility, a residence order in respect of the minor child and the payment, by the opponent, of maintenance for the benefit of the child. In the alternative, FO applied for joint custody of the child.
- 12 By judgment of 4 July 2016, the Judecătoria Buftea (Court of First Instance, Buftea) granted the divorce of EP and FO by mutual consent, declared that parental responsibility is to be exercised jointly, declared that the child is to reside with her mother, defined the arrangements for the father to have access to the child and ordered the father to pay maintenance for the benefit of the child.
- 13 With regard to FO's application for joint residence, based on options available under French law, that court stated that the case-law of the French courts had established that discord between the parties could be an obstacle to such a form of residence.
- 14 On 7 April 2017, FO and EP both brought appeals before the Tribunalul Ilfov (Regional Court, Ilfov, Romania) against the judgment given at first instance.
- 15 FO argued that the Judecătoria Buftea (Court of First Instance, Buftea) lacked jurisdiction to rule on the dispute before it and requested that the judgment be set aside.
- 16 In addition, both parties to the main proceedings maintained that the substance of the judgment should be varied in their favour.
- 17 The referring court states that the Judecătoria Buftea (Court of First Instance, Buftea) made its ruling taking into consideration the best interests of the child who has been living in Romania with her mother since the end of 2013, where she attends a French school and is well integrated in her environment. In terms of both language and culture, the child's strongest links are with Romania.
- 18 On the other hand, with regard to FO, who states that he has established his principal residence in France, Romania and Russia, his work situation is currently uncertain, and the nature of his activities would not allow him to devote sufficient time to his child. FO's assertion that he is ready to give up his career to move to Romania and live with his child is not a sufficient basis for an application for an order that the child should reside in FO's home. Moreover, the child declared that she has affection for both parents, that their continuous disputes caused her to suffer and that, without wishing to disappoint her father, she wished to live with her mother.
- 19 However, the referring court has doubts about the ground of appeal raised by FO, claiming that the Romanian courts lack jurisdiction, and based on the argument that the French courts are better placed to rule on the applications relating to parental responsibility. It therefore considers it necessary to ascertain whether it has jurisdiction in the light of the provisions of Article 15 of Regulation No 2201/2003.
- 20 In those circumstances, the Tribunalul Ilfov (Regional Court, Ilfov) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
  - '(1) Must Article 15 of [Regulation No 2201/2003] be interpreted as establishing an exception to the rule that the national courts of the place where the child is habitually resident are to have jurisdiction?
  - (2) Must Article 15 of [Regulation No 2201/2003] be interpreted as meaning that the facts set out by a party to proceedings (namely: the child was born in France, her father is a French citizen, her blood relations in France include two sisters and a brother, a niece (her sister's daughter), her paternal grandfather, her father's current partner and their minor daughter, whereas she has no family ties on her mother's side in Romania, she attends a French school, her upbringing and

mentality have always been French, the language spoken at home between the parents and by the parents to the child has always been French) are factors indicating that the child has a particular connection with France, and must the national court therefore declare that the French courts are better placed to hear the case?

- (3) Must Article 15 of [Regulation No 2201/2003] be interpreted as meaning that the procedural differences between the legislation of the two States, such as hearings held in camera by specialised judges, are subject to the best interests of the child for the purposes of that provision [of EU law]?’

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

- 21 Under Article 99 of the Rules of Procedure of the Court of Justice, where the reply to a question referred for a preliminary ruling may be clearly deduced from existing case-law or where the answer admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 22 That provision must be applied in the present case.

### ***The first question***

- 23 The answer to the first question, which concerns whether Article 15 of Regulation No 2201/2003 establishes an exception to the general rule of jurisdiction laid down in Article 8 of that regulation, according to which the courts of the Member State where the child is habitually resident at the time the court is seised have jurisdiction in matters of parental responsibility, may be inferred from the actual wording of Article 15.
- 24 Article 15(1) of Regulation No 2201/2003 expressly states that it is to be applied by way of an exception. As has been established by the Court, Article 15(1) constitutes a special rule of jurisdiction that derogates from the general rule of jurisdiction laid down in Article 8(1) of that regulation and the transfer of the case to a court better placed to hear it occurs only in exceptional cases (see, to that effect, judgments of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraphs 47 and 48, and of 4 October 2018, *IQ*, C-478/17, EU:C:2018:812, paragraph 32).
- 25 Accordingly, the answer to the first question is that Article 15(1) of Regulation No 2201/2003 must be interpreted to the effect that it establishes an exception to the general rule of jurisdiction laid down in Article 8 of Regulation No 2201/2003, according to which the jurisdiction of the courts of the Member States is determined by the place where the child is habitually resident at the time the courts are seised.

### ***The second question***

- 26 By its second question, the referring court asks in essence whether Article 15 of Regulation No 2201/2003 must be interpreted to the effect that it lays down criteria for determining whether a child has a particular connection to a Member State other than the one having jurisdiction as to the substance of the matter, whether those criteria are exhaustive and whether, in the event that they have been fulfilled, it follows that the courts of that other Member State are better placed to hear the case.
- 27 It should, first of all, be stated that it is apparent from the actual wording of Article 15(3) of Regulation No 2201/2003 that that article lays down five alternative criteria from which it may be concluded that a child has a particular connection to a Member State.

- 28 Next, as has been established by the Court, those criteria, set out in subparagraphs (a) to (e) of that provision, are exhaustive, so that cases where those factors are lacking are immediately excluded from the transfer mechanism (judgments of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 51, and of 4 October 2018, *IQ*, C-478/17, EU:C:2018:812, paragraph 35).
- 29 In that regard, as the European Commission mentioned in its written observations, the information listed by the father of the child and reiterated in the second question referred differ from those criteria and accordingly are not directly relevant for determining whether there is a particular connection between the child and another Member State, in the present case the French Republic. However, the first two pieces of information, that is to say, that the child was born in that Member State of a father who is a national of that State, may serve to demonstrate that the child is a national of that Member State and therefore that the criterion in Article 15(3)(c) of Regulation No 2201/2003 is satisfied.
- 30 Finally, it should be pointed out that, in accordance with Article 15(1) of Regulation No 2201/2003, read in the light of recital 13 of that regulation, a court of a Member State having jurisdiction as to the substance of the case ‘may’, if the conditions in that provision are satisfied, transfer that case to a court of another Member State which it considers better placed to hear the case, without being obliged to do so. The court of a Member State that normally has jurisdiction to deal with a given case must, if it is to be able to request a transfer to a court of another Member State, be capable of rebutting the strong presumption in favour of maintaining its own jurisdiction, on the basis of that regulation (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 49).
- 31 In order to provide the referring court with a helpful answer, it should also be borne in mind that the transfer to a court of another Member State under Article 15 of Regulation No 2201/2003 may take place only if three conditions are satisfied, that is to say, that there is a connection between the child and another Member State, that the court having jurisdiction as to the substance of the case considers that a court of that other Member State is better placed to hear the case and that the transfer is in the best interests of the child, in so far as it is not liable to be detrimental to the situation of the child concerned (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraphs 50, 56 and 58).
- 32 In circumstances such as those in the main proceedings, it may be that the child concerned has a particular connection with another Member State, in the present case the French Republic, on the ground, mentioned in paragraph 29 above, that the child has the nationality of that Member State. It may also be that the father of that child, who is one of the holders of parental responsibility, is habitually resident in that Member State.
- 33 However, as the Court has already stated, the court with jurisdiction, in the present case the Romanian court, must also compare the extent and degree of the relation of general proximity which, under Article 8(1) of Regulation No 2201/2003, links the child concerned to the Member State to which that court belongs, with the extent and degree of the relation of particular proximity demonstrated by one or more of the factors set out in Article 15(3) of that regulation which exists between that child and another Member State (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 54).
- 34 The existence of a ‘particular connection’, within the meaning of Article 15(1) of that regulation, does not necessarily prejudge whether a court of that other Member State is ‘better placed to hear the case’, for the purposes of that provision, or, if it is, whether the transfer of the case to that other court is in the best interests of the child. The court having jurisdiction must determine whether the transfer of the case to that court is such as to provide genuine and specific added value, with respect to the decision to be taken in relation to the child, as compared with the case remaining before that court (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraphs 55 and 57).

- 35 If the Romanian court with jurisdiction by virtue of Article 8(1) of Regulation No 2201/2003 reaches the conclusion that the relations which link the child concerned to the Member State of her habitual residence, in the present case Romania, are stronger than those which link her to another Member State, that is to say the French Republic, that conclusion is sufficient to rule out the application of Article 15 of that regulation.
- 36 Accordingly, the answer to the second question is that Article 15 of Regulation No 2201/2003 must be interpreted to the effect that, if one or more of the five alternative criteria which it lays down exhaustively in order to assess whether the child has a particular connection to another Member State, other than the State of her habitual residence, are satisfied, the court having jurisdiction by virtue of Article 8(1) of that regulation has the option to transfer the case to a court which it considers to be better placed to deal with the dispute before it, but is not obliged to do so. If the court having jurisdiction reaches the conclusion that the relations which link the child concerned to the Member State of her habitual residence are stronger than those which link her to another Member State, that conclusion is sufficient to rule out the application of Article 15 of that regulation.

### *The third question*

- 37 By its third question, the referring court asks in essence whether Article 15 of Regulation No 2201/2003 must be interpreted to the effect that the existence of differences between the rules of law, in particular the rules of procedure, of a Member State having jurisdiction as to the substance of a case and those of another Member State with which the child concerned has a particular connection, such as the examination of cases in camera by specialist judges, may be a relevant factor, in light of the best interests of the child, when assessing whether the courts of that Member State are better placed to hear that case.
- 38 The referring court states that, according to one of the parties to the main proceedings, there are, in the present case, substantial differences between the legislation of the Member State having jurisdiction as to the substance of the case and that of the other Member State concerned, in that the legislation of that other State makes provision for the examination of cases in camera by specialist judges, so that the courts of the latter Member State are better placed to hear the case in the main proceedings.
- 39 In that regard, apart from the fact that the existence of such differences is strongly contested by the other party to the main proceedings, it should be recalled that, in order to determine whether the transfer of the case to a court of another Member State is such as to provide genuine and specific added value, the court with jurisdiction may take into consideration, amongst other factors, the rules of procedure of that other Member State, such as those applicable to the taking of evidence required for dealing with the case. However, the court having jurisdiction should not take into consideration, within such an assessment, the substantive law of that other Member State which might be applicable by the court of that other Member State, if the case were transferred to it. Doing so would be in breach of the principles of mutual trust between Member States and mutual recognition of judgments that are the basis of Regulation No 2201/2003 (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 57).
- 40 It must be pointed out that judicial cooperation and mutual trust between the courts of the Member States must lead to mutual recognition of judicial decisions, the cornerstone for the creation of a genuine judicial area (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 50).
- 41 It follows that, as part of its assessment under Article 15 of Regulation No 2201/2003, the court with jurisdiction may take into consideration the rules of procedure applicable under the legislation of another Member State if they have a specific impact on the ability of the court of the latter Member

State to deal with the case better, in particular by facilitating the gathering of evidence and testimony, and, in doing so, provide added value to the resolution of the case in the interests of the child. On the other hand, the view cannot be taken, in a general and abstract way, that the rules of law of another Member State, such as those referred to by one of the parties to the main proceedings, that is to say, the rules relating to the examination of the case in camera by specialised judges, constitute a factor to be taken into consideration when the court with jurisdiction assesses whether there is a court better placed to hear the case.

- 42 In view of the foregoing, the answer to the third question is that Article 15 of Regulation No 2201/2003 must be interpreted to the effect that the existence of differences between the rules of law, in particular the rules of procedure, of a Member State having jurisdiction as to the substance of a case and those of another Member State with which the child concerned has a particular connection, such as the examination of cases in camera by specialist judges, does not constitute, in a general and abstract way, a relevant factor, in light of the best interests of the child, when assessing whether the courts of that Member State are better placed to hear that case. The court having jurisdiction may take those differences into consideration only if they are such as to provide genuine and specific added value with respect to the decision to be taken in relation to that child, as compared with the possibility of the case remaining before that court.

### Costs

- 43 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.

On those grounds, the Court (Eighth Chamber) hereby rules:

- 1. Article 15(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 it establishes an exception to the general rule of jurisdiction laid down in Article 8 of Regulation No 2201/2003, according to which the jurisdiction of the courts of the Member States is determined by the place where the child is habitually resident at the time the courts are seised.**
- 2. Article 15 of Regulation No 2201/2003 must be interpreted to the effect that, if one or more of the five alternative criteria which it lays down exhaustively in order to assess whether the child has a particular connection to another Member State, other than the State of her habitual residence, are satisfied, the court having jurisdiction by virtue of Article 8(1) of that regulation has the option to transfer the case to a court which it considers to be better placed to deal with the dispute before it, but is not obliged to do so. If the court having jurisdiction reaches the conclusion that the relations which link the child concerned to the Member State of her habitual residence are stronger than those which link her to another Member State, that conclusion is sufficient to rule out the application of Article 15 of that regulation.**
- 3. Article 15 of Regulation No 2201/2003 must be interpreted to the effect that the existence of differences between the rules of law, in particular the rules of procedure, of a Member State having jurisdiction as to the substance of a case and those of another Member State with which the child concerned has a particular connection, such as the examination of cases in camera by specialist judges, does not constitute, in a general and abstract way, a relevant criterion, in light of the best interests of the child, when assessing whether the courts of that Member State are better placed to hear that case. The court having jurisdiction may take**

**those differences into consideration only if they are such as to provide genuine and specific added value with respect to the decision to be taken in relation to that child, as compared with the possibility of the case remaining before that court.**

[Signatures]