



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

27 April 2023 *

(Reference for a preliminary ruling – Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility – Regulation (EC) No 2201/2003 – Articles 9 and 15 – Continuing jurisdiction of the courts of the Member State of the child’s former habitual residence following the child having moved – Concept of ‘moving’ – Application for modification of a decision relating to access rights – Calculation of the time limit within which such an application must be submitted – Transfer of the case to a court of the Member State of the child’s new habitual residence, better placed to hear the case)

In Case C-372/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal d’arrondissement de Luxembourg (District Court, Luxembourg, Luxembourg), made by decision of 8 June 2022, received at the Court on 9 June 2022, in the proceedings

CM

v

DN,

THE COURT (Ninth Chamber),

composed of L.S. Rossi (Rapporteur), President of the Chamber, J.-C. Bonichot and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by S. Noë and W. Wils, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: French.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 9(1) and 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 proceedings between CM and DN concerning the rights of access to their children.

Regulation No 2201/2003

- 3 Recitals 12, 13 and 33 of Regulation No 2201/2003 are drafted as follows:
 - ‘(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.
 - (13) 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. However, in this case the second court should not be allowed to transfer the case to a third court.

...

 - (33) This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union’.
- 4 Article 2 of that regulation, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation:

...

- (7) the term “parental responsibility” shall mean 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;

...

- (9) the term “rights of custody” shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child’s place of residence;

(10) the term “rights of access” shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time;

...’

5 That regulation includes a Chapter II, entitled ‘Jurisdiction’, which contains, in Section 2 thereof, entitled ‘Parental responsibility’, Articles 8 to 15 of that regulation.

6 Article 8 of Regulation No 2201/2003, entitled ‘General jurisdiction’, provides as follows:

‘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.’

7 Under Article 9 of that regulation, entitled ‘Continuing jurisdiction of the child’s former habitual residence’:

‘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.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child’s new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.’

8 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.'

- 9 Article 19 of that regulation, entitled 'Lis pendens and dependent actions', provides, in paragraph 2 thereof:

'Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established'.

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

- 10 CM and DN are the father and mother, respectively, of two children born in 2009 and 2010. The family resided in the Paris region (France) until 2015, when they moved to Luxembourg.

- 11 By judgment of 12 June 2020, the family court of the tribunal d'arrondissement de Luxembourg (District Court, Luxembourg, Luxembourg) fixed the legal domicile and habitual residence of those children with their mother, in France, with effect deferred to 31 August 2020, in order, inter alia, to take account of the children's interest in finishing their school year in Luxembourg. By that judgment, that court granted their father, who is still resident in Luxembourg, rights of access with respect to the children and a right to have them to stay, in accordance with certain conditions, also with effect from 31 August 2020.
- 12 The mother and the children concerned actually moved to France on 30 August 2020.
- 13 On 14 October 2020, the father lodged an application before the tribunal d'arrondissement de Luxembourg (District Court, Luxembourg) for an amendment to the terms of his rights of access and his rights to have the children to stay.
- 14 Since the mother had already lodged an application, the subject matter of which was similar, before the family court of the tribunal judiciaire de Nanterre (Court of Nanterre, France), six days before the father's application before the tribunal d'arrondissement de Luxembourg (District Court, Luxembourg), that court, by judgment of 1 December 2020, stayed the proceedings pursuant to Article 19(2) of Regulation No 2201/2003 until that French court had ruled on its international jurisdiction.
- 15 By judgment of 17 September 2021, the tribunal judiciaire de Nanterre (Court of Nanterre) declared that it did not have jurisdiction to rule on the mother's application, essentially on the ground that, in accordance with Article 9 of Regulation No 2201/2003, the father, first, had lodged his application before the tribunal d'arrondissement de Luxembourg (District Court, Luxembourg) within the three-month period following the lawful moving of the children concerned and, second, had not accepted the jurisdiction of the French courts.
- 16 By judgment of 3 March 2022, the cour d'appel de Versailles (Court of Appeal, Versailles, France) dismissed the mother's appeal against that judgment.
- 17 In its request for a preliminary ruling, the tribunal d'arrondissement de Luxembourg (District Court, Luxembourg) asks, in the first place, whether it has jurisdiction under Article 9 of Regulation No 2201/2003. In that regard, that court observes that, although the father's application to change the arrangements for his rights of access and to have the children to stay was submitted less than three months after the actual moving of the children concerned, it was submitted more than four months after delivery of the judgment of 12 June 2020, which determined that move and which, having become final, has the force of *res judicata*. If that date were accepted, that court would therefore be required to decline jurisdiction to hear that application.
- 18 In the second place, the referring court raises the issue of the interplay between Article 9 of Regulation No 2201/2003 and Article 15 of that regulation. While considering that, in the light of the circumstances of the dispute in the main proceedings, two of the conditions for the application of Article 15 appear to be satisfied, the referring court nevertheless expresses doubt as to whether it is possible to decline jurisdiction in respect of that dispute in favour of the French courts, in the light both of the father's observations on the priority of the provisions of Article 9 over those of Article 15, and of the judgment of 4 October 2018, *IQ* (C-478/17, EU:C:2018:812).

- 19 In those circumstances, the tribunal d'arrondissement du Luxembourg (District Court, Luxembourg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does Article 9(1) of Regulation [No 2201/2003] apply:

- (a) to an application to modify rights of access as defined by Article 2(10) of that regulation, made by a person granted such rights by a judicial decision which, in the interests of the children, was not to take effect until a future time, but which became final and has the status of *res judicata*, delivered in the [Member] State in which the children were formerly habitually resident more than four months before the application is brought before the court on the basis of Article 9(1) [of that regulation];
- (b) so as to exclude, if it does so apply, the general rule of jurisdiction contained in Article 8 of that regulation,

notwithstanding that recital 12 of [Regulation No 2201/2003] states that “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[; t]his 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 ...”?

- (2) If [the first question] is answered in the affirmative, does the jurisdiction which thus exists under Article 9(1) of [Regulation No 2201/2003], which is expressed to be “by way of exception to Article 8” of that regulation, preclude the application of Article 15 of the same regulation, which is expressed to apply “by way of exception” and where it “is in the best interests of the child”?

Consideration of the questions referred

The first question

- 20 By its first question, the referring court asks, in essence, whether Article 9(1) of Regulation No 2201/2003 must be interpreted as meaning that the three-month period during which, by way of derogation from Article 8(1) of that regulation, the courts of the Member State of the child’s former habitual residence continue to have jurisdiction to hear an application for modification of a final judgment concerning rights of access, begins on the day following that on which that child actually moved, or the day following that of the judgment which fixed the date of the change of habitual residence of that child.
- 21 As a preliminary point, it is important to recall that, as is apparent from recital 12 of Regulation No 2201/2003, 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, in effect, considered that the court geographically close to the child’s habitual residence is the court best placed to assess the measures to be taken 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).

- 22 Article 8(1) of Regulation No 2201/2003 reflects that objective by establishing, in matters of parental responsibility, a general rule of jurisdiction in favour of the courts of the Member State in which the child is habitually resident at the time the court is seised. On account of their geographical proximity, those courts are generally the best placed to assess the measures to be taken in the interests of the child (judgment of 14 July 2022, *CC (Transfer of a child's habitual residence to a third country)*, C-572/21, EU:C:2022:562, paragraph 27 and the case-law cited).
- 23 However, in accordance with Article 8(2) of that regulation, the rule of jurisdiction laid down in Article 8(1) is to apply subject, inter alia, to Article 9 of that regulation.
- 24 Under Article 9(1) of Regulation No 2201/2003, 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 of that regulation, 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.
- 25 Article 9(2) of that regulation states that the continuing jurisdiction provided for in Article 9(1) is not to apply if the holder of the access rights has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.
- 26 Thus, having regard to the wording of Article 9 of Regulation No 2201/2003, that article makes the continuing jurisdiction, in relation to rights of access, of the courts of the Member State of the child's former habitual residence subject to five cumulative conditions.
- 27 The first condition requires the child concerned to have moved 'lawfully' and to have acquired a new habitual residence in the Member State to which he or she has moved. According to the second condition, the courts of the Member State of that child's former habitual residence must, before that child moves, have delivered a judgment on rights of access to the child. The third condition requires the holder of the access rights to continue to reside habitually in the Member State of that child's former habitual residence. Under the fourth condition, the courts of the latter Member State must have been seised, during a period of three months 'following the move' of the child concerned, of an application to modify the former judgment concerning rights of access which they issued before that move. According to the fifth and last condition, the holder of access rights must not have accepted the jurisdiction of the courts of the Member State of the child's new habitual residence.
- 28 It is apparent from the grounds of the request for a preliminary ruling that the referring court has doubts only as to the interpretation of the words 'following the move' within the meaning of Article 9(1) of Regulation No 2201/2003. It raises the issue of whether the three-month period provided for in that provision begins on the day following the date on which the children concerned actually moved, namely, in the present case, 30 August 2020, or the day following the date of the judgment which fixed, with deferred effect, the date on which those children were to change their habitual residence, which was issued, in the present case, on 12 June 2020.
- 29 It is apparent from the clear wording of Article 9(1) that the EU legislature intended to limit the jurisdiction of the courts of the child's former habitual residence, on the basis of that article, to a period of three months following the physical move of that child from one Member State to

another Member State, in order to establish his or her new habitual residence there. None of the provisions of Article 9(1) or, more broadly, of Regulation No 2201/2003 permits the inference that that three-month period could begin to run from an event prior to the actual moving of the child concerned, such as the judicial decision which determined, as the case may be with deferred effect, the date of that child's change of habitual residence.

- 30 Consequently, the fact, mentioned by the referring court, that the judgment which initially fixed the rights of access had become final on the date of the application for modification of that judgment, is irrelevant for the purposes of the application of the rule of jurisdiction laid down in Article 9(1) of Regulation No 2201/2003.
- 31 Such a request for modification is justified by the change in circumstances relating to the moving of the child concerned and the transfer of his or her habitual residence to another Member State, irrespective of the date on which the judgment which initially fixed the rights of access and the arrangements for them was adopted.
- 32 A national court therefore cannot rely against the holder of the rights of access on any 'force of *res judicata*' of the judgment which initially fixed those rights and the arrangements for them, in order to find that the application made by the latter for the purpose of modifying those rights of access is inadmissible, as otherwise the three-month period referred to in Article 9(1) of Regulation No 2201/2003 during which the courts of the Member State of the child's former habitual residence retain jurisdiction to rule on such an application by way of derogation from Article 8 of that regulation would be rendered ineffective.
- 33 It follows that the answer to the first question is that Article 9(1) of Regulation No 2201/2003 must be interpreted as meaning that the three-month period during which, by way of derogation from Article 8(1) of that regulation, the courts of the Member State of the child's former habitual residence retain jurisdiction to hear an application for modification of a final judgment concerning rights of access, begins on the day following that on which that child actually moved to the Member State of his or her new habitual residence.

The second question

- 34 By its second question, the referring court asks, in essence, whether Regulation No 2201/2003 must be interpreted as meaning that the court of the Member State of the child's former habitual residence, which has jurisdiction to rule on the substance of the matter under Article 9 of that regulation, can exercise the option of transferral, provided for in Article 15 of that regulation, to the court of the Member State of that child's new habitual residence.
- 35 Article 15(1) of Regulation No 2201/2003 provides that, by way of exception, the courts of a Member State having jurisdiction as to the substance of a case may request the transfer of that case, or a specific part thereof, to a court of another Member State with which the child has a particular connection, if they consider that that court is better placed to hear the case, and where the transfer is in the best interests of the child.
- 36 Paragraphs (2) to (6) of Article 15 set out the conditions under which such a transfer may be made and the procedures for doing so.

- 37 In that regard, it must be observed that, under Article 15(4), if the parties do not bring proceedings before the courts of the other Member State within the time limit set for that purpose by the court of the Member State having jurisdiction as to the substance of the matter, that court ‘shall continue to exercise jurisdiction in accordance with Articles 8 to 14’ of Regulation No 2201/2003. That court also continues to exercise jurisdiction in accordance with Articles 8 to 14 where, as provided for in Article 15(5) of that regulation, the courts of the other Member State have not accepted jurisdiction within six weeks of their seisure.
- 38 In providing thus, the EU legislature envisaged that the option of transferral set out in Article 15(1) of that regulation may be exercised by a court of a Member State whose jurisdiction is based on Article 9 of that regulation.
- 39 It should also be noted that no provision of Regulation No 2201/2003 permits the inference that making use of that option to transfer jurisdiction to a court of the Member State of the child’s new habitual residence is precluded in principle.
- 40 In that regard, it should be noted that, as is apparent, in essence, from paragraph 33 of the judgment of 4 October 2018, *IQ* (C-478/17, EU:C:2018:812), Article 15(1) of Regulation No 2201/2003 allows the court of a Member State having jurisdiction as to the substance of a case in matters of parental responsibility to transfer its jurisdiction, over all or a specific part of the case before it, to a court that would not normally have substantive jurisdiction but which, in the circumstances of the particular case, must be considered to be ‘better placed’ to hear that case.
- 41 In the present case, as the European Commission correctly observed, unlike the case which gave rise to that judgment, in which the courts seised of the two Member States at issue both had jurisdiction as to the substance of that case on the basis of Article 8(1) and Article 12 of Regulation No 2201/2003 respectively, which led the Court of Justice to rule out the possibility of exercising between those courts the option of transferral established in Article 15 of that regulation, in the present case it is established that the tribunal judiciaire de Nanterre (Court of Nanterre) declared that it did not have jurisdiction to hear an action brought by the mother of the children concerned on the ground, inter alia, that the father of those children had lodged an application for modification of his rights of access and to have the children to stay before the referring court within the three-month period following the lawful moving of those children, as provided for in Article 9(1) of that regulation.
- 42 Furthermore, the information in the file before the Court does not show that the possibility, for the referring court, of exercising the option of transferral provided for in Article 15 of Regulation No 2201/2003 may conflict with the application of other provisions of that regulation. In particular, it does not appear that the French courts have jurisdiction to hear an application to modify rights of access and the arrangements for them under Articles 10 to 14 of that regulation.
- 43 However, the national court which intends to exercise that option of transferral must ensure, first, that the child has a ‘particular connection’ with another Member State, next, that the court of that Member State is ‘better placed’ to hear the case and, lastly, that the transfer ‘is in the best interests of the child’, in accordance with the interpretation of those three conditions given by the Court in paragraphs 49 to 61 of the judgment of 27 October 2016, *D.* (C-428/15, EU:C:2016:819), and in paragraphs 31 to 34 and 37 to 42 of the order of 10 July 2019, *EP (Parental responsibility and court best placed)* (C-530/18, EU:C:2019:583).

- 44 Having regard to the foregoing considerations, the answer to the second question is that Regulation No 2201/2003 must be interpreted as meaning that the court of the Member State of the child's former habitual residence, which has jurisdiction as to the substance of the matter under Article 9 of that regulation, may exercise the option of transferral, set out in Article 15 of that regulation, to the court of the Member State of that child's new habitual residence provided that the conditions laid down in Article 15 are satisfied.

Costs

- 45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

- 1. Article 9(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 as meaning that the three-month period during which, by way of derogation from Article 8(1) of Regulation No 2201/2003, the courts of the Member State of the child's former habitual residence retain jurisdiction to hear an application for modification of a final judgment concerning rights of access, begins on the day following that on which that child actually moved to the Member State of his or her new habitual residence.

- 2. Regulation No 2201/2003**

must be interpreted as meaning that the court of the Member State of the child's former habitual residence, which has jurisdiction as to the substance of the matter under Article 9 of that regulation, may exercise the option of transferral, set out in Article 15 of that regulation, to the court of the Member State of that child's new habitual residence provided that the conditions laid down in Article 15 are satisfied.

[Signatures]