



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

4 October 2018\*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 15 — Transfer to a court better placed to hear the case — Scope — Article 19 — Lis pendens)

In Case C-478/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Cluj (Regional Court, Cluj, Romania), made by decision of 17 July 2017, received at the Court on 9 August 2017, in the proceedings

**IQ**

v

**JP,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, E. Levits, A. Borg Barthet (Rapporteur), M. Berger and F. Biltgen, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Romanian Government, by C.-R. Canțăr, R.H. Radu, C.-M. Florescu and R. Mangu, acting as Agents,
- the European Commission, by M. Wilderspin and D. Calciu, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2018,

gives the following

\* Language of the case: Romanian.

## Judgment

- 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 proceedings between IQ and JP concerning, inter alia, the exercise of parental responsibility over the three children of both spouses following their divorce.

### Legal context

#### *EU law*

- 3 Recitals 12 and 13 of Regulation No 2201/2003 state:
  - (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. ...
- 4 Article 1 of that regulation, entitled 'Scope', provides in paragraph 1 thereof:

'This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.'
- 5 Article 2(1) of that regulation provides as follows:

'For the purposes of this Regulation:

  1. the term "court" shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1'.
- 6 Section 1 of Chapter II of the regulation contains the rules on jurisdiction with respect to divorce, legal separation and marriage annulment. Under section 1, Article 3(1) of Regulation No 2201/2003, entitled 'General jurisdiction', provides:

'In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory: –

...

– the respondent is habitually resident, ...

...’

7 Section 2, Chapter II of that regulation sets out, in Articles 8 to 15, a body of rules concerning jurisdiction in matters of parental responsibility.

8 Article 8 of that regulation, entitled ‘General jurisdiction’, provides:

‘1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.’

9 Article 12 of that regulation, entitled ‘Prorogation of jurisdiction’, states in paragraphs 1 and 2 thereof that:

‘1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

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

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

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

10 Under Article 15 of Regulation No 2201/2003, entitled ‘Transfer to a court better placed to hear the case’:

‘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.'

<sup>11</sup> Section 3 of Chapter II of that regulation, entitled 'Common provisions', contains, inter alia, Article 19, which, under the heading 'Lis pendens and dependent actions', provides in paragraphs 2 and 3 thereof:

'2. 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.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.’

### ***Romanian law***

- 12 It is clear from the order for reference that Article 448(1)(1) of the Codul de procedură civilă român (Romanian Code of Civil Procedure) provides that judgments at first instance in matters of parental responsibility are enforceable. In addition, under Romanian procedural law, judicial decisions handed down at first instance in matters of parental responsibility may be set aside only if an appeal is upheld.

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

- 13 Three children were born during JP and IQ’s marriage. Those children have lived in the United Kingdom with IQ, their mother, since 2012.
- 14 On 26 November 2014, IQ initiated divorce proceedings before the Judecătoria Cluj-Napoca (Court of First Instance, Cluj-Napoca, Romania) against her husband, JP, who resides in Florești (Romania). She also asked the Judecătoria Cluj-Napoca (Court of First Instance, Cluj-Napoca) to grant her sole parental responsibility for the three children of the marriage, to award her custody of the children and to order JP to pay an allowance for their maintenance and education.
- 15 JP made a counter-claim, by which he sought divorce on grounds of mutual consent or, in the alternative, on grounds of joint fault, the award of joint parental responsibility for the three children of the marriage and the establishment of a programme for maintaining contact with the children.
- 16 At the hearing of 28 September 2015, the Judecătoria Cluj-Napoca (Court of First Instance, Cluj-Napoca) examined whether it had international jurisdiction and declared that it did have jurisdiction to hear the case. With the parties agreeing to divorce on grounds of mutual consent, that court held that the requirements were met for it to give a ruling on that head of claim. Consequently, it granted a divorce on grounds of mutual consent and severed the ancillary heads of claim from the divorce claim, continuing its deliberations on those heads of claim by setting a date for a hearing at which the parties might submit evidence.
- 17 By civil judgment, the Judecătoria Cluj-Napoca (Court of First Instance, Cluj-Napoca) partially upheld IQ’s claim and JP’s counter-claim. It ordered that parental responsibility for the three children of the marriage was to be shared, awarded IQ sole custody of the children, determined the amount of maintenance payable by JP in respect of the children, and set up a programme for maintaining the father’s contact with the children.
- 18 On 7 September 2016, IQ and JP appealed against that judgment before the referring court, the Tribunalul Cluj (Regional Court, Cluj, Romania).
- 19 Before that court, IQ seeks sole parental responsibility and a more restrictive programme for maintaining the father’s contact with the children. For his part, JP seeks greater contact.
- 20 On 26 December 2016, IQ applied to the High Court of Justice (England and Wales), Family Division (Family Court), Birmingham, for a restraining order against JP. On 3 January 2017, IQ also asked that court to determine who would be awarded custody of the children and to JP’s contact arrangements.

- 21 The same day, that court adopted an interim measure under which the children were not to reside with the father pending a final ruling in the case. On 2 February 2017, it also invited the referring court to relinquish jurisdiction in the case, on the ground that the children are resident in the United Kingdom, with the consent of the parents.
- 22 By order of 6 July 2017, the High Court of Justice (England & Wales), Family Division (Family Court), Birmingham, asked the Romanian court to transfer the case to it pursuant to Article 15 of Regulation No 2201/2003 on the ground that, since the habitual residence of the three children concerned has been the United Kingdom since at least 2013, including during the entire proceedings before the Romanian courts, it is the court better placed to hear the case within the meaning of that provision.
- 23 The referring court notes that, in the present case, the court being asked to transfer the case would hear it at the appeal stage and judgment at first instance has already been handed down.
- 24 It is uncertain how that judgment is to be treated since, according to Article 448(1)(1) of the Romanian Civil Code of Procedure, it is, in principle, enforceable, to the effect that, as long as that judgment has not been set aside, JP may demand that it be enforced.
- 25 If the referring court was to transfer the case to the High Court of Justice (England & Wales), Family Division (Family Court), Birmingham, on the basis of Article 15 of Regulation No 2201/2003, it would not be able to rule on the appeals lodged by IQ and JP before it, so that the decision handed down at first instance would remain in force, in accordance with the Romanian Civil Code of Procedure.
- 26 In those circumstances, the Tribunalul Cluj (Regional Court, Cluj) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the expression “the courts of a Member State having jurisdiction as to the substance of the matter” which appears in Article 15 [of Regulation No 2201/2003] refer equally to courts hearing the case at first instance and to courts of appeal? It is important to know whether the case may be transferred, on the basis of that provision, to a court better placed to hear it if the court having jurisdiction and being asked to transfer the case to a better placed court is a court of appeal, while the better placed court is a court of first instance.
- (2) If the answer to Question 1 is in the affirmative, how is the court having jurisdiction and transferring the case to a better placed court to deal with the judgment at first instance?’

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

- 27 As a preliminary point, it must be noted that the situation at issue in the main proceedings is characterised by the fact that both courts, that is the courts of Romania and the courts of the United Kingdom, have jurisdiction under Regulation No 2201/2003.
- 28 It is clear from the documents before the Court that the Romanian courts examined whether they had jurisdiction and declared that they did under Article 12(1) of Regulation No 2201/2003, in conjunction with Article 3(1) of that regulation, while the United Kingdom court, second seised, derives its jurisdiction in matters of parental responsibility from Article 8 of Regulation No 2201/2003, given that the three children’s habitual residence is in the United Kingdom, where they have been living with their mother since 2012.
- 29 Accordingly, as the Advocate General noted in point 47 of his Opinion, in order to answer the questions referred it is necessary to assess whether Article 15 of Regulation No 2201/2003 must be interpreted as applying to a situation in which the courts of the two Member States in question have jurisdiction to determine the substance of the matter pursuant to Articles 8 and 12 of that regulation.

- 30 In that regard, it must be borne in mind that Article 15(1) of Regulation No 2201/2003 provides that the courts of a Member State having jurisdiction as to the substance of a case may transfer 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.
- 31 Article 15, which is in Section 2 of Chapter II of Regulation No 2201/2003 establishing a body of rules governing jurisdiction in cases concerning parental responsibility, lays down a specific rule of jurisdiction that derogates from the general rule of jurisdiction, laid down in Article 8 of that regulation, that designates the courts of the place where the child is habitually resident as having jurisdiction as to the substance of those cases (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 29).
- 32 Accordingly, Article 15(1) of Regulation No 2201/2003 permits the transfer of a given case to a court of a Member State other than that of the court that normally has jurisdiction, provided, as is stated in recital 13 of that regulation, that such a transfer meets specific conditions and that it occurs only in exceptional cases (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 47).
- 33 It follows that Article 15(1) of Regulation No 2201/2003 allows the court that normally has jurisdiction to rule on matters of parental responsibility, whether under the general rule set out in Article 8(1) of that regulation or by prorogation of jurisdiction on the basis of Article 12 of that regulation, to transfer its jurisdiction, over all or over a specific part of the case before it, to a court that would not normally have jurisdiction in the matter but which, in the circumstances of the particular case, must be considered to be ‘better placed’ to hear that case.
- 34 For the purpose of identifying the court best placed to hear a given case, it is necessary, in particular, to designate a court of another Member State with which the child concerned has a ‘particular connection’ (see, to that effect, judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 50).
- 35 In accordance with the Court’s case-law, in order to establish whether there is such a connection in a particular case, reference must be made to the factors that are listed, exhaustively, in Article 15(3)(a) to (e) of Regulation No 2201/2003. It follows that cases where those factors are not present are immediately excluded from the transfer mechanism (judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 51).
- 36 It is clear that the situation in the main proceedings, in which the children have lived and continue to be habitually resident in the United Kingdom, the Member State with which it is necessary to establish a particular connection, does not align with any of the factors listed in that provision.
- 37 In particular, the factor set out in Article 15(3)(b) of Regulation No 2201/2003, whereby ‘the Member State is the former habitual residence of the child’ necessarily refers to circumstances in which the child once resided but no longer habitually resides in the Member State with which it is necessary to establish a particular connection.
- 38 In addition, the factors listed in Article 15(3) of that regulation all — if not expressly, at least in essence — concern evidence of a close connection between the child concerned in the case and a Member State other than that of the court having jurisdiction to hear the case on the basis of Article 8(1) or Article 12 of that regulation (see, by analogy, judgment of 27 October 2016, *D.*, C-428/15, EU:C:2016:819, paragraph 52).

- 39 Therefore, the court of another Member State with which the child in question has a particular connection and which is best placed to hear the case, as referred to in Article 15(1) of Regulation No 2201/2003, cannot be the court that normally has jurisdiction as to the substance of the case on the basis of Article 8 or 12 of that regulation.
- 40 It follows from the foregoing considerations that Article 15 of Regulation No 2201/2003 must be interpreted as not applying in circumstances in which the courts of both Member States have jurisdiction as to the substance of the matter under Article 8 or 12 of that regulation.
- 41 First of all, any interpretation to the contrary would run counter to the intention of the EU legislator — referred to in paragraph 32 above and clearly expressed in recital 13 of Regulation No 2201/2003 and in the wording of Article 15 of that regulation — to ensure that the transfer mechanism established by that provision is used only in exceptional cases.
- 42 Next, it must be noted that Chapters II and III of Regulation No 2201/2003 lay down, inter alia, rules on jurisdiction and on recognition and enforcement of judgments concerning parental responsibility, with the objective of ensuring legal certainty (see, to that effect, judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 33 and the case-law cited).
- 43 To interpret Article 15 of Regulation No 2201/2003 as meaning that it allows the transfer of a case even when the conditions for the application of that provision are not met would undermine the rules governing allocation of jurisdiction established by that regulation and, accordingly, the objective of providing legal certainty pursued by the EU legislator.
- 44 Lastly, in a situation such as that at issue in the main proceedings, such an interpretation would render Article 19(2) of that regulation — which aims to resolve, in matters of parental responsibility, situations in which courts in different Member States have jurisdiction — meaningless.
- 45 Indeed, under that provision, where proceedings concerning 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 is, of its own motion, to stay its proceedings until such time as the jurisdiction of the court first seised is established.
- 46 In the present case, it is clear from the documents before the Court that the conditions for the application of that provision are met. Accordingly, it is for the High Court of Justice (England & Wales), Family Division (Family Court), Birmingham, seised second, of its own motion to stay proceedings until the jurisdiction of the referring court, seised first, is established.
- 47 In that regard, as was noted in paragraph 28 above, the referring court has examined whether it has jurisdiction and declared that it does on the basis of Article 12 of Regulation No 2201/2003. Nevertheless, it is also for that court to assess whether its jurisdiction has ceased in accordance with Article 12(2).
- 48 Since, as was observed in paragraph 40 above, Article 15 of Regulation No 2201/2003 must be interpreted as not applying in circumstances such as those in the main proceedings, it is not necessary to answer the questions on the interpretation of the conditions for the implementation of that article.
- 49 In the light of all the foregoing, Article 15 of Regulation No 2201/2003 must be interpreted as not applying in circumstances, such as those in the main proceedings, in which both courts seised have jurisdiction as to the substance of the matter under Articles 12 and 8, respectively, of that regulation.

## Costs

50 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 (Fifth Chamber) hereby rules:

**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, must be interpreted as not applying in circumstances, such as those in the main proceedings, in which both courts seised have jurisdiction as to the substance of the matter under Articles 12 and 8, respectively, of that regulation.**

[Signatures]