JUDGMENT OF THE COURT (Third Chamber)

11 July 2008 (*)

(Judicial cooperation in civil matters – Jurisdiction and enforcement of judgments – Enforcement in matrimonial matters and matters of parental responsibility – Regulation (EC) No 2201/2003 – Application for non−recognition of a decision requiring the return of a child wrongfully retained in another Member State – Urgent preliminary ruling procedure)

In Case C−195/08 PPU,

REFERENCE for a preliminary ruling under Article 234 EC from the Lietuvos Aukščiausiasis Teismas (Lithuania), made by decision of 30 April 2008, received at the Court on 14 May 2008, in the proceedings brought by

Inga Rinau,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J.N. Cunha Rodrigues (Rapporteur), J. Klučka, P. Lindh and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,

Registrars: C. Strömholm, Administrator, and M.A. Gaudissart, Head of Unit,

having regard to the request of the referring court, of 21 May 2008, received at the Court on 22 May 2008, that the reference for a preliminary ruling be dealt with under an urgent procedure pursuant to Article 104b of the Rules of Procedure,

having regard to the decision of 23 May 2008 of the Third Chamber granting that request,

having regard to the written procedure and further to the hearing on 26 and 27 June 2008,

after considering the observations submitted on behalf of:

– Mrs Rinau, by G. Balčiūnas and G. Kaminskas, advokatai,

– Mr Rinau, by D. Foigt, advokatė,

– the Lithuanian Government, by D. Kriaučiūnas and R. Mackevičienė, acting as Agents,

– the German Government, by J. Kemper, acting as Agent,

– the French Government, by A.-L. During, acting as Agent,

– the Latvian Government, by E. Balode-Buraka and E. Eihmane, acting as Agents,

– the Netherlands Government, by C. ten Dam, acting as Agent,

– the United Kingdom Government, by E. Jenkinson, acting as Agent, and C. Howard QC,

– the Commission of the European Communities, by A.−M. Rouchaud-Joët and A. Steiblytė, acting as Agents,

after hearing the Advocate General,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation 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; 'the Regulation').

2 The reference was made in proceedings between Mrs Rinau and Mr Rinau regarding the return to Germany of their daughter Luisa, who is being retained in Lithuania by Mrs Rinau.

Legal context

The 1980 Hague Convention

3 Article 3 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') provides:

'The removal or the retention of a child is to be considered wrongful where –

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in subparagraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.'

4 Under Article 12 of the 1980 Hague Convention:

'Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.'

5 Article 13 of the 1980 Hague Convention provides:

'Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority [of the State] of the child's habitual residence.'

6 The 1980 Hague Convention entered into force on 1 December 1983. All the Member States of the European Union are contracting parties to that convention.

Community legislation

7 Recital 17 in the preamble to the Regulation states:

'In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the [1980 Hague Convention] would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.'

8 Recital 21 in the preamble to the Regulation states:

'The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.'

9 Article 2 of the Regulation provides:

'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;

5. the term “Member State of origin” shall mean the Member State where the judgment to be enforced was issued;

6. the term “Member State of enforcement” shall mean the Member State where enforcement of the judgment is sought;

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;

8. the term “holder of parental responsibility” shall mean any person having parental responsibility over a child;

…

11. the term “wrongful removal or retention” shall mean a child’s removal or retention where:

(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child’s place of residence without the consent of another holder of parental responsibility.’

10 Article 8 of the Regulation states:

‘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.’

11 Article 10 of the Regulation 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 …’

12 Under Article 11 of the Regulation:

‘1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the [1980 Hague Convention], in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13(b) of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time−limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.’

13 Chapter III of the Regulation, entitled ‘Recognition and enforcement’, contains Articles 21 to 52 thereof. Section 4 of Chapter III, entitled ‘Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child’, contains Articles 40 to 45 of the Regulation.

14 Article 21(1) and (3) of the Regulation provides:

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

…

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

…’

15 Article 23 of the Regulation states:

‘A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

…’

16 Under Article 24 of the Regulation:

‘The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Articles 22(a) and 23(a) may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.’

17 Article 28(1) of the Regulation is worded as follows:

‘A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.’

18 Article 31 of the Regulation provides:

‘1. The court applied to [for a declaration of enforceability] shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application.

2. The application may be refused only for one of the reasons specified in Articles 22, 23 and 24.

3. Under no circumstances may a judgment be reviewed as to its substance.’

19 Article 40 of the Regulation provides:

‘1. This Section shall apply to:

…

(b) the return of a child entailed by a judgment given pursuant to Article 11(8).

2. The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions in Sections 1 and 2 of this Chapter.'

20 Under Article 42 of the Regulation, entitled 'Return of the child':

'1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article [11(8)], the court of origin may declare the judgment enforceable.

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

(a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;

(b) the parties were given an opportunity to be heard; and

(c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment.'

21 Article 43 of the Regulation reads as follows:

'1. The law of the Member State of origin shall be applicable to any rectification of the certificate.

2. No appeal shall lie against the issuing of a certificate pursuant to Articles 41(1) or 42 (1).'

22 Under Article 44 of the Regulation, '[t]he certificate shall take effect only within the limits of the enforceability of the judgment'.

23 Article 60 of the Regulation provides:

'In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

…

(e) the [1980 Hague Convention]'.

24 Article 68 of the Regulation provides:

‘The Member States shall notify to the Commission the lists of courts and redress procedures referred to in Articles 21, 29, 33 and 34 and any amendments thereto.

The Commission shall update this information and make it publicly available through the publication in the *Official Journal of the European Union* and any other appropriate means.’

25 According to the information relating to courts and redress procedures pursuant to Article 68 of Regulation No 2201/2003 (OJ 2005 C 40, p. 2), pursuant to the first paragraph of Article 68 of the Regulation, the Republic of Lithuania informed the Commission that the applications provided for by Articles 21 and 29 of that regulation and the appeals provided for by Article 33 thereof are to be brought before the Lietuvos apeliacinis teismas (Court of Appeal of Lithuania), and that the appeals provided for by Article 34 of the Regulation may be brought only by an appeal in cassation before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).

26 It is apparent from that information that an application for a declaration of enforceability of a judgment issued by a court of a Member State other than the Republic of Lithuania, pursuant to Article 28(1) of the Regulation, must be lodged before the Lietuvos apeliacinis teismas.

27 Pursuant to Article 72, the Regulation is to apply essentially from 1 March 2005. The Regulation does not apply in respect of the Kingdom of Denmark.

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

28 Mrs Rinau, a Lithuanian national, and Mr Rinau, a German national, married on 27 July 2003 and resided in Bergfeld (Germany). Their daughter, Luisa, was born on 11 January 2005. In the course of March 2005 the spouses began to live separately, Luisa remaining with her mother. It was then that, according to the order for reference, divorce proceedings were initiated before the Amtsgericht Oranienburg (Oranienburg Local Court) (Germany).

29 On 21 July 2006, having obtained Mr Rinau’s consent to leaving Germany with their daughter for two weeks’ holidays, Mrs Rinau travelled with Luisa and a son from an earlier relationship to Lithuania, where she has remained ever since.

30 On 14 August 2006, the Amtsgericht Oranienburg provisionally awarded custody of Luisa to her father. On 11 October 2006, the Brandenburgisches Oberlandesgericht (Higher Regional Court of *Land* Brandenburg) (Germany) dismissed Mrs Rinau’s appeal and upheld the decision of the Amtsgericht Oranienburg.

31 On 30 October 2006, Mr Rinau applied to the Klaipėdos apygardos teismas (Klaipėda Regional Court) (Lithuania) in order to obtain the return of his daughter to Germany, relying on the 1980 Hague Convention and the Regulation. That court dismissed the application by a decision of 22 December 2006.

32 According to information provided to the Court of Justice at the hearing, the decision of 22 December 2006 was transmitted to the German central authority by Mr Rinau’s lawyer, and that authority itself forwarded that decision to the Amtsgericht Oranienburg. Subsequent to that transmission, the Lithuanian central authority sent a translation of that decision into German.

33 By a decision of 15 March 2007, the Lietuvos apeliacinis teismas overturned the decision of the Klaipėdos apygardos teismas and ordered that the child be returned to Germany.

34 In the course of April 2007, the Klaipėdos apygardos teismas made an order suspending the enforcement of the decision of the Lietuvos apeliacinis teismas of 15 March 2007. The latter court set aside that order by a decision of 4 June 2007. As was made clear at the hearing, the enforcement of the decision of 15 March 2007 has been suspended several times.

35 On 4 June 2007 and 13 June 2007 respectively, Mrs Rinau and the Head of the Public Prosecution Service of the Republic of Lithuania applied to the Klaipėdos apygardos teismas to have the proceedings reopened, relying on new circumstances and the interest of the child in accordance with the first paragraph of Article 13 of the 1980 Hague Convention. On 19 June 2007, that court dismissed those applications on the ground that the jurisdiction to adjudicate on them did not belong to it, but to the German courts. Mrs Rinau lodged an appeal against that dismissal, but the Lietuvos apeliacinis teismas upheld the decision by a decision of 27 August 2007. Both those decisions were quashed by the Lietuvos Aukščiausiasis Teismas by a judgment of 7 January 2008, which referred the applications back to the Klaipėdos apygardos teismas.

36 By a decision of 21 March 2008, the Klaipėdos apygardos teismas once again dismissed the applications for a reopening. That decision was upheld by the Lietuvos apeliacinis teismas by a decision of 30 April 2008. On an application by Mrs Rinau, the Lietuvos Aukščiausiasis Teismas decided, on 26 May 2008, to adjudicate in cassation on those decisions and suspended the enforcement of the decision of 15 March 2007 requiring the return of Luisa to Germany pending its decision on the substance of the case.

37 Meanwhile, by a judgment of 20 June 2007, the Amtsgericht Oranienburg granted the divorce of Mr and Mrs Rinau. It awarded permanent custody of Luisa to Mr Rinau. Taking into consideration in particular the decision of 22 December 2006 of the Klaipėdos apygardos teismas refusing the return of the child, the Amtsgericht Oranienburg took account of the content of that decision and of the submissions made and ordered Mrs Rinau to send the child back to Germany and to leave her in the custody of Mr Rinau. Mrs Rinau was not present at the hearing of that court, but she was represented there and made submissions. On the same day, the Amtsgericht Oranienburg annexed to its decision a certificate issued pursuant to Article 42 of the Regulation.

38 On 20 February 2008, the Brandenburgisches Oberlandesgericht dismissed the appeal lodged by Mrs Rinau against the judgment of the Amtsgericht Oranienburg, upheld that judgment in relation to Luisa's custody and held that Mrs Rinau was already bound to return the child to Germany. Mrs Rinau was present at the hearing and made submissions.

39 Mrs Rinau lodged an application before the Lietuvos apeliacinis teismas for non−recognition of the judgment of the Amtsgericht Oranienburg of 20 June 2007, in so far as it had awarded custody of Luisa to Mr Rinau and ordered Mrs Rinau to return the child to her father and to leave her in his custody.

40 On 14 September 2007, the Lietuvos apeliacinis teismas made an order by which it found Mrs Rinau's application inadmissible. According to that court, the certificate issued by the Amtsgericht Oranienburg pursuant to Article 42 of the Regulation stated that all the conditions necessary to the issue of such a certificate, as set out in Article 42(2), had been satisfied. Taking the view that the judgment, in so far as it ordered the return of the child to Germany, ought to have been directly enforced pursuant to the provisions of Section 4 of Chapter III of the Regulation, without the need for special exequatur proceedings for the recognition and enforcement of judicial decisions, the Lietuvos apeliacinis teismas held that

it was necessary to declare inadmissible Mrs Rinau's application for non−recognition of the part of the judgment ordering her to return the child to Mr Rinau and to leave her in his custody.

41 Mrs Rinau then lodged an appeal on a point of law before the Lietuvos Aukščiausiasis Teismas to have that order set aside and a fresh decision adopted granting her application for non−recognition of the judgment of the Amtsgericht Oranienburg of 20 June 2007, in so far as that judgment awarded custody of Luisa to Mr Rinau and ordered Mrs Rinau to return the child to her father and to leave her in his custody.

42 In these circumstances the Lietuvos Aukščiausiasis Teismas decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Can an interested party within the meaning of Article 21 of [the Regulation] apply for non-recognition of a judicial decision if no application has been submitted for recognition of that decision?

2. If the answer to Question 1 is in the affirmative: how is a national court, when examining an application for non-recognition of a decision brought by a person against whom that decision is to be enforced, to apply Article 31(1) of [the Regulation], which states that '… [n]either the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application'?

3. Is the national court which has received an application by the holder of parental responsibility for non-recognition of that part of the decision of the court of the Member State of origin requiring the child staying with that person to be returned to the State of origin, and in respect of which the certificate provided for in Article 42 of [the Regulation] has been issued, required to examine that application on the basis of the provisions of Sections 1 and 2 of Chapter III of [the Regulation], as provided for in Article 40(2) of that regulation?

4. What meaning is to be attached to the condition laid down in Article 21(3) of [the Regulation] ('[w]ithout prejudice to Section 4 of this Chapter')?

5. Do the adoption of the decision to return the child and the issue of the certificate under Article 42 of [the Regulation] in the court of the Member State of origin, after a court of the Member State in which the child is wrongfully retained has taken a decision that the child be returned to his or her State of origin, comply with the objectives of and procedures under [the Regulation]?

6. Does the prohibition in Article 24 of [the Regulation] of review of the jurisdiction of the court of the Member State of origin mean that, if it is unable to review the jurisdiction of the court of the Member State of origin and cannot identify any other grounds for non-recognition of decisions as set out in Article 23 of [the Regulation], a national court which has received an application for recognition or non-recognition of a decision of a foreign court is obliged to recognise the decision of the court of the Member State of origin ordering the child's return if the court of the Member State of origin failed to observe the procedures laid down in the Regulation when deciding on the issue of the child's return?'

The urgent procedure

43 By an order of 21 May 2008, lodged at the Court Registry on 22 May 2008, the Lietuvos Aukščiausiasis Teismas requested that the reference for a preliminary ruling be dealt with under the urgent procedure provided for in Article 104b of the Rules of Procedure.

44 The referring court reasoned that request by reference to recital 17 in the preamble to the Regulation, which refers to the return without delay of a child which has been removed or retained, and to Article 11(3) of that regulation, which sets a deadline of six weeks for the court to which an application for return is made to issue its judgment. The referring court finds that it is necessary to act urgently on the ground that any delay would be very unfavourable to the relationship between the child and the parent with whom she does not live. The damage to that relationship could be irreparable.

45 The referring court also relies on the need to protect the child against any possible harm and the need to ensure a fair balance between the interests of the child and those of her parents, which is another reason for having recourse to the urgent procedure.

46 On a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Third Chamber of the Court decided to allow the referring court's request that the reference for a preliminary ruling be dealt with under an urgent procedure.

The questions referred

Preliminary observations

47 The Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), which has subsequently been amended on several occasions, sought to facilitate the recognition and enforcement of judgments in civil and commercial matters as between the Contracting States. To that end, it introduced rules on jurisdiction and procedures for the recognition and enforcement of judgments in those matters. Those rules were based on the principle of the trust of the courts of one Contracting State in the decisions taken by the courts of another Contracting State and vice versa. According to Article 1 thereof, that convention is not to apply as regards the status or legal capacity of natural persons and rights in property arising out of a matrimonial relationship.

48 The 1980 Hague Convention was adopted on the basis that the interests of children are of paramount importance in matters relating to their custody and that it is necessary to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.

49 The guiding principles of the conventions referred to in the two previous paragraphs were taken over, in matrimonial matters and matters of parental responsibility, by the Regulation. The Regulation is applicable in civil matters relating to divorce, legal separation or marriage annulment and to the attribution, exercise, delegation, restriction or termination of parental responsibility.

50 Under recital 21 in the preamble thereto, the Regulation is based on the idea that the recognition and enforcement of judgments given in a Member State must be based on the principle of mutual trust and the grounds for non-recognition must be kept to the minimum required.

51 According to recitals 12 and 13 in the preamble thereto, the Regulation is based on the idea that the best interests of the child must prevail and, under recital 33, the Regulation 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.

52 The Regulation seeks, in particular, to deter child abductions between Member States and, in cases of abduction, to obtain the child's return without delay.

53 Under recital 17 in the preamble thereto, the Regulation complements the provisions of the 1980 Hague Convention, which nevertheless remains applicable.

54 Pursuant to Article 60, the Regulation is to take precedence over the 1980 Hague Convention.

55 The questions referred for a preliminary ruling should be answered in the light of the observations and principles recalled in paragraphs 47 to 54 of this judgment.

The fourth to sixth questions

56 By its fourth to sixth questions, which it is appropriate to examine together and first, the referring court is essentially asking whether the adoption by a court of the Member State of origin of a decision that the child be returned and the issue of the certificate under Article 42 of the Regulation comply with the objectives of and procedures under that regulation where a court of the Member State where the child is wrongfully retained has taken a decision that the child be returned to the Member State of origin. The referring court also seeks to ascertain whether Article 24 of the Regulation must be interpreted as meaning that the court of the Member State in which the child is wrongfully retained is obliged to recognise the decision requiring the child's return issued by the court of the Member State of origin if that court failed to observe the procedures laid down in the Regulation.

57 Article 11(8) of the Regulation states that '[n]otwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child'.

58 According to some of the observations submitted to the Court, the effect of that provision is that a certificate can be issued pursuant to Article 42 of the Regulation only if a judgment of non−return has been issued beforehand pursuant to Article 13 of the 1980 Hague Convention. It would follow, in the main proceedings, that the fact that the Lietuvos apeliacinis teismas ordered the return of the child, by its decision of 15 March 2007, would have prevented the courts of the Member State of origin from issuing a certificate pursuant to Article 42, as the Amtsgericht Oranienburg did by its decision of 20 June 2007, which was upheld by the decision of 20 February 2008 of the Brandenburgisches Oberlandesgericht.

59 The interpretation that a certificate cannot be issued pursuant to Article 42 of the Regulation unless a judgment of non−return has been issued beforehand must be adopted.

60 That is the interpretation which follows from the Regulation as a whole and, in particular, from Article 11(8) thereof.

61 Having provided that a judgment given in a Member State is to be recognised in the other Member States without any special procedure being required, the Regulation organises the

recognition and declaration of enforceability of judgments in two parts (Articles 21(1) and (3), 11(8), 40(1) and 42(1)). According to the first part, the adoption of a decision of recognition and the declaration of enforceability may be requested in accordance with the procedures provided for in Section 2 of Chapter III of the Regulation. By the second part, the enforceability of certain judgments concerning rights of access or requiring the return of the child is subject to the provisions of Section 4 of that chapter.

62 That second part ties in very closely with the provisions of the 1980 Hague Convention and seeks, provided that certain conditions are satisfied, the immediate return of the child.

63 Although intrinsically connected with other matters governed by the Regulation, in particular rights of custody, the enforceability of a judgment requiring the return of a child following a judgment of non−return enjoys procedural autonomy, so as not to delay the return of a child who has been wrongfully removed to or retained in a Member State other than that in which that child was habitually resident immediately before the wrongful removal or retention.

64 The procedural autonomy of the provisions in Articles 11(8), 40 and 42 of the Regulation and the priority given to the jurisdiction of the court of origin, in the context of Section 4 of Chapter III of the Regulation, are reflected in Articles 43 and 44 of the Regulation, which provide that the law of the Member State of origin is to be applicable to any rectification of the certificate, that no appeal is to lie against the issuing of a certificate and that that certificate is to take effect only within the limits of the enforceability of the judgment.

65 The reservation expressed in Article 21(3) of the Regulation by the use of the terms '[w]ithout prejudice to Section 4', which is the subject of the fourth question put by the referring court, is intended to make it clear that the option afforded by that provision to any interested party to apply for a decision that the judgment issued in a Member State be or not be recognised does not preclude the possibility, where the conditions are satisfied, of recourse to the rules provided for in Articles 11(8), 40 and 42 of the Regulation in the event of return of a child following a judgment of non−return, since those rules take precedence over those provided for in Sections 1 and 2 of Chapter III.

66 It should be noted that the procedure provided for in the event of return of a child following a judgment of non−return takes over and reinforces the provisions of Articles 12 and 13 of the 1980 Hague Convention. In particular, the period for adjudicating on an application for non−return is very short. Moreover, a final decision requiring return may be adopted by a court having jurisdiction under the Regulation. Lastly, the procedure culminates in the certification of the decision which gives it special enforceability, the conditions for granting that certificate and the effects thereof being expressly set out in the Regulation.

67 Thus, as regards the conditions for granting a certificate, Article 42(2) of the Regulation provides that the judge of origin who delivered the judgment referred to in Article 40(1)(b) of the Regulation is to issue the certificate only if:

'(a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;

(b) the parties were given an opportunity to be heard; and

(c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.'

68 As regards the effects of certification, once the certificate has been issued, the judgment requiring the return of a child referred to in Article 40(1)(b) is to be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

69 It should be recalled that those rules apply only in the event of return of a child following a judgment ordering non−return referred to in Article 11(8) of the Regulation.

70 Article 11(8) of the Regulation supports that view, stating that '[n]otwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child'.

71 Although the expression '[n]otwithstanding a judgment of non-return' is somewhat ambiguous, its link with the words 'any subsequent judgment' indicates a chronological relationship between a decision, namely that of non−return, and the subsequent decision, such wording leaving no room for any doubt as regards the prior nature of the first decision.

72 Recital 17 in the preamble to the Regulation confirms that interpretation, stating that a non−return decision 'could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention'.

73 It is also apparent from Article 42(2)(c) of the Regulation, which requires the court to take into consideration the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention, that that court may adjudicate only after the adoption of a non−return decision in the Member State of enforcement.

74 It follows from this that Article 40(1)(b) of the Regulation is a provision which applies only where a non−return decision has been taken beforehand in the Member State of enforcement.

75 The consequences that the observations referred to in paragraph 58 of this judgment infer from that interpretation cannot however be accepted.

76 Article 11(3) of the Regulation requires that courts to which an application for return is made act expeditiously, using the most expeditious procedures available in national law. The second subparagraph of Article 11(3) requires, in addition, that, without prejudice to that objective of expedition, the judgment must be issued, except where exceptional circumstances make this impossible, no later than six weeks after the application is lodged.

77 More specifically, Article 11(6) provides that, where a non-return order has been issued by a court, the court must immediately, either directly or through its central authority, transmit a copy of that court order and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention. The urgent nature of those steps is also revealed by the last sentence of Article 11 (6), which provides that the court of origin 'shall receive all the mentioned documents within one month of the date of the non-return order'.

78 Those provisions seek not only to secure the immediate return of the child to the Member State where he or she was habitually resident immediately before the wrongful removal or retention, but also to enable the court of origin to assess the reasons for and evidence underlying the non−return decision issued.

79 In particular, the court of origin is required to examine whether the conditions set out in paragraph 67 of this judgment are satisfied.

80 Since responsibility for that assessment ultimately lies with the court of origin, pursuant to Articles 10 and 40(1)(b) of the Regulation, procedural steps which, after a non−return decision has been taken, occur or recur in the Member State of enforcement are not decisive and may be regarded as irrelevant for the purposes of implementing the Regulation.

81 If the position were otherwise, there would be a risk that the Regulation would be deprived of its useful effect, since the objective of the immediate return of the child would remain subject to the condition that the redress procedures allowed under the domestic law of the Member State in which the child is wrongfully retained have been exhausted. That risk should be particularly balanced because, as far as concerns young children, biological time cannot be measured according to general criteria, given the intellectual and psychological structure of such children and the speed with which that structure develops.

82 Even if the object of the Regulation is not to unify the rules of substantive law and of procedure of the different Member States, it is nevertheless important that the application of those national rules does not prejudice its useful effect (see, by analogy, as regards the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Case C−365/88 *Hagan* [1990] ECR I−1845, paragraphs 19 and 20; Case C−68/93 *Shevill and Others* [1995] ECR I−415, paragraph 36; and Case C−159/02 *Turner* [2004] ECR I−3565, paragraph 29).

83 It should be added that that interpretation of the Regulation is consistent with its requirements and purpose and that it is the only interpretation which best ensures the effectiveness of Community law.

84 Moreover, it is backed up by two elements. The first is based on the words ‘any subsequent judgment which requires the return of the child’ in Article 11(8) of the Regulation, words which express the idea that, once the non−return decision has been taken, the court of origin may be required to take one or more decisions in order to obtain the return of the child, including in situations where there is a procedural or factual impasse. The second element is of a systemic nature and rests on the fact that, contrary to the procedure laid down in Articles 33 to 35 of the Regulation in respect of the application for a declaration of enforceability, judgments issued in accordance with Section 4 of Chapter III thereof (rights of access and return of the child) may be declared enforceable by the court of origin irrespective of any possibility of appeal, whether in the Member State of origin or in that of enforcement.

85 By excluding any appeal against the issuing of a certificate pursuant to Article 42(1), other than an action seeking rectification within the meaning of Article 43(1), the Regulation seeks to ensure that the effectiveness of its provisions is not undermined by abuse of the procedure. Moreover, Article 68 does not list among the redress procedures any appeal against decisions taken pursuant to Section 4 of Chapter III of the Regulation.

86 The foregoing considerations cover the characteristics of the dispute in the main proceedings.

87 First, the sequence of the decisions taken by the Lithuanian courts, as regards both the application for return and that for non−recognition of the decision certified pursuant to Article 42 of the Regulation, does not appear to have observed the autonomy of the procedure provided for in that provision. Second, the number of decisions and their diverse nature (to set aside, overturn, reopen, suspend) are evidence that, even if the most

expeditious domestic procedures may have been adopted, the periods of time elapsed were already, on the date on which the certificate was issued, in manifest contradiction to the requirements of the Regulation.

88 It remains to be pointed out that, since no doubt has been expressed as regards the authenticity of the certificate issued by the Amtsgericht Oranienburg, and since that certificate contains all the elements required by Article 42 of the Regulation, an appeal against the issue of the certificate or opposition to its recognition could, under Article 43(2) of the Regulation, only have been dismissed, the requested court being able only to declare the enforceability of the certified decision.

89 In the light of the foregoing observations, the answer to the fourth to sixth questions must be that, once a non−return decision has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 of the Regulation, that that decision has been suspended, overturned, set aside or, in any event, has not become *res judicata* or has been replaced by a decision ordering return, in so far as the return of the child has not actually taken place. Since no doubt has been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the Regulation, opposition to the recognition of the decision ordering return is not permitted and it is for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child.

The first question

90 By its first question, the referring court is essentially asking whether an interested party within the meaning of Article 21 of the Regulation can apply for non−recognition of a judicial decision if no application has been submitted for recognition of that decision.

91 The answer to the fourth to sixth questions precludes the possibility of an application for non−recognition in the event that a decision requiring the return of the child has been adopted and certified in accordance with Articles 11(8) and 42 of the Regulation.

92 Nevertheless, that possibility cannot be discounted in general terms.

93 Article 21(3) of the Regulation provides that, '[w]ithout prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised'. The second subparagraph of Article 21(3) lays down, to that end, the rules of local jurisdiction.

94 Nor is it precluded that an application for non−recognition of a decision results incidentally in its recognition, in which case Article 21(4) would apply.

95 The possibility of submitting an application for non−recognition if no application for recognition has been lodged beforehand is capable of satisfying various objectives, either of a substantive nature, in particular those relating to the best interests of the child or the stability and harmony of the family, or of a procedural nature, by making it possible to bring forward the production of evidence which might no longer be available in the future.

96 The application for non−recognition must however comply with the procedure provided for in Section 2 of Chapter III of the Regulation and, in particular, it can be pursued according to the provisions of domestic law only if they do not limit the scope and effects of the Regulation.

97 Therefore, the answer to the first question must be that, except where the procedure concerns a decision certified pursuant to Articles 11(8) and 40 to 42 of the Regulation, any interested party can apply for non−recognition of a judicial decision, even if no application for recognition of the decision has been submitted beforehand.

The second question

98 By its second question, the referring court asks, in the event that it is necessary to examine an application for non-recognition of a decision brought by the person against whom that decision is to be enforced and when no application for recognition has been submitted beforehand, how Article 31(1) of the Regulation should be applied, in particular the sentence which reads '[n]either the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application'.

99 The reservation expressed in paragraph 91 of this judgment also applies in the context of this question.

100 Subject to that reservation, if an application for non−recognition of a judicial decision is brought and no application for recognition of that decision has been submitted, Article 31(1) of the Regulation must be interpreted in the light of the specific scheme of Section 2 of Chapter III of the Regulation. Accordingly, that provision must remain unapplied.

101 Article 31 of the Regulation relates to the declaration of enforceability. It provides that, in that case, the party against whom enforcement is sought is not entitled to make any submissions on the application. Such a procedure must be understood in the light of the fact that, being of an enforceable and unilateral nature, it cannot take account of the submissions of that party without assuming a declaratory and adversarial nature, which would run counter to its very logic according to which the rights of the defence are ensured by means of the appeal provided for in Article 33 of the Regulation.

102 The situation envisaged in the event of an application for non−recognition is different.

103 The reason for that difference lies in the fact that, in such a situation, the applicant is the person against whom the application for a declaration of enforceability might have been brought.

104 Since the requirements referred to in paragraph 101 of this judgment are no longer justified, the party against whom the application for non−recognition is brought cannot be deprived of the possibility of making submissions on the application.

105 Any other outcome would result in limiting the effectiveness of the applicant's action, since the purpose of the non−recognition procedure is to seek a negative assessment which, by its nature, calls for an adversarial procedure.

106 It follows that, as the Commission asserted, the defendant, who is seeking recognition, is entitled to make submissions on the application.

107 The answer to the second question must therefore be that Article 31(1) of the Regulation, in so far as it provides that neither the person against whom enforcement is sought, nor the child is, at this stage of the proceedings, entitled to make any submissions on the application, is not applicable to proceedings initiated for non−recognition of a judicial decision if no application for recognition has been lodged beforehand in respect of that decision. In such a situation, the defendant, who is seeking recognition, is entitled to make such submissions.

The third question

108 By its third question, the referring court asks whether the national court which has received an application by the holder of parental responsibility for non-recognition of that part of the decision of the court of the Member State of origin requiring the return of the child to the Member State of origin, a decision in respect of which the certificate provided for in Article 42 of the Regulation has been issued, is required to examine that application on the basis of the provisions of Sections 1 and 2 of Chapter III of the Regulation, as provided for in Article 40(2) thereof.

109 As is apparent from the answers to the previous questions, an application for non‑recognition of a judicial decision is not permitted if a certificate has been issued pursuant to Article 42 of the Regulation. In such a situation, the decision which has been certified is enforceable and no opposition to its recognition is permitted.

110 There is therefore no need to answer the third question.

Costs

111 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 (Third Chamber) hereby rules:

1. **Once a non‑return decision has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 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, that that decision has been suspended, overturned, set aside or, in any event, has not become *res judicata* or has been replaced by a decision ordering return, in so far as the return of the child has not actually taken place. Since no doubt has been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the Regulation, opposition to the recognition of the decision ordering return is not permitted and it is for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child.**

2. **Except where the procedure concerns a decision certified pursuant to Articles 11 (8) and 40 to 42 of Regulation No 2201/2003, any interested party can apply for non‑recognition of a judicial decision, even if no application for recognition of the decision has been submitted beforehand.**

3. **Article 31(1) of Regulation No 2201/2003, in so far as it provides that neither the person against whom enforcement is sought, nor the child is, at this stage of the proceedings, entitled to make any submissions on the application, is not applicable to proceedings initiated for non‑recognition of a judicial decision if no application for recognition has been lodged beforehand in respect of that**

decision. In such a situation, the defendant, who is seeking recognition, is entitled to make such submissions.

[Signatures]

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* Language of the case: Lithuanian.