

JUDGMENT OF THE COURT (First Chamber)

22 December 2010 (*)

(Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Matrimonial matters and parental responsibility – Child whose parents are not married – Concept of ‘habitual residence’ of an infant – Concept of ‘rights of custody’)

In Case C-497/10 PPU,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Court of Appeal of England and Wales (Civil Division) (United Kingdom), made by decision of 8 October 2010, received at the Court on 18 October 2010, in the proceedings

Barbara Mercredi

v

Richard Chaffe,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, M. Ilešič, E. Levits (Rapporteur) and M. Berger, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Hewlett, Principal Administrator,

having regard to the request by the national court that the reference for a preliminary ruling be dealt with under an urgent procedure, in accordance with Article 104b of the Court’s Rules of Procedure,

having regard to the decision of 28 October 2010 of the First Chamber granting that request,

having regard to the written procedure and further to the hearing on 1 December 2010,

after considering the observations submitted on behalf of:

- Ms Mercredi, by M. Scott-Manderson QC, M.-C. Sparrow, Barrister, and H. Newman, Solicitor,
- Mr Chaffe, by H. Setright QC, D. Williams, Barrister, and K. Gieve, Solicitor,
- the United Kingdom Government, by S. Ossowski, acting as Agent, H. Walker, Solicitor, and D. Beard, Barrister,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the French Government, by B. Beaupère-Manokha, acting as Agent,
- Ireland, by N. Travers BL,

- the European Commission, by A.-M. Rouchaud-Joët and M. Wilderspin, acting as Agents,

after hearing the Advocate General,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns 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 has been made in proceedings between the father, Mr Chaffe, and the mother, Ms Mercredi, of a female child, concerning rights of custody in respect of that child, who is at present with her mother on the island of Réunion (France).

Legal context

The 1980 Hague Convention

- 3 Article 1 of the Hague Convention of 25 October 1980 on the civil aspects of international child abduction (‘the 1980 Hague Convention’) provides:

‘The objects of the present Convention are:

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State;

...’

- 4 Article 13 of that 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; ...’

- 5 Article 19 of the Convention states:

‘A decision under [the 1980 Hague] Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.’

European Union law

- 6 Article 2 of the Regulation provides:

‘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;
- ...
- (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;
- (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 ... 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.’

7 Article 8 of the Regulation is worded 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.’

8 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 and

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention

or

- (b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:
- (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;
 - ...
 - (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);
 - (iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.'

9 Article 11(8) of the Regulation reads as follows:

'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.'

10 Article 13(1) of the Regulation provides:

'Where a child's habitual residence cannot be established ..., the courts of the Member State where the child is present shall have jurisdiction.'

11 Article 16 of the Regulation provides that

'[a] court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

...

...'

12 Article 19 of the Regulation provides:

'...

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.’

13 In accordance with Article 60(e) of the Regulation, in relations between Member States, that regulation is to take precedence over the 1980 Hague Convention in so far as that convention concerns matters governed by the Regulation.

14 Articles 3, 5(a) and 5(b) of that convention correspond, in essence, to Article 2(11), (9) and (10) of the Regulation respectively.

15 Article 62 of the Regulation provides:

‘1. The agreements and conventions referred to in Articles 59(1), 60 and 61 shall continue to have effect in relation to matters not governed by this Regulation.

2. The conventions mentioned in Article 60, in particular the 1980 Hague Convention, continue to produce effects between the Member States which are party thereto, in compliance with Article 60.’

National law

16 According to the order for reference, under the law of England and Wales, the natural father of a child does not, by operation of law, have parental responsibility.

17 However, under section 4 of the Children Act 1989, a father may acquire parental responsibility by being named on the child’s birth certificate, by entering into a parental responsibility agreement with the mother, or by being awarded parental responsibility by a court order (parental responsibility order).

18 In addition, in private law proceedings concerning children in England and Wales, the courts can make orders under section 8 of that Act or, in the case of the High Court of Justice of England and Wales, within its inherent jurisdiction with respect to child protection. Those orders enable the courts to determine residence (residence order) and rights of access (contact order), to prohibit certain acts (prohibited steps order) and to resolve specific issues (specific issue order).

19 The reference for a preliminary ruling refers to national case-law which states that, when seised of an application seeking an order relating to rights of custody, the courts of England and Wales may acquire such rights even if the party applying does not have such rights.

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

The facts which gave rise to the dispute in the main proceedings

20 According to the documents submitted to the Court, the appellant in the main proceedings, Ms Mercredi, who was born on the island of Réunion and is a French national, moved in the year 2000 to England, where she was employed as a crew member by an airline company. For several years, she and Mr Chaffe, a British national, lived together in England as an unmarried couple.

21 That relationship produced a daughter named Chloé, a French national, who was born on 11 August 2009. In the week following the birth of that child, Ms Mercredi and Mr Chaffe,

whose relationship had not been stable for some time and who were no longer living together after Mr Chaffe had left the family home, separated.

- 22 On 7 October 2009, when Chloé was two months old, Ms Mercredi and her daughter left England for the island of Réunion, where they arrived on the following day. The child's father was not told beforehand of the departure of the mother and the child but he received a letter, on 10 October 2009, in which Ms Mercredi set out the reasons for that departure.
- 23 It is common ground that the child's habitual residence, before her departure on 7 October 2009, was in England. It is also common ground that Chloé's removal to the island of Réunion was lawful, since at that time Ms Mercredi was the only person with 'rights of custody' within the meaning of Article 2(9) of the Regulation.

The proceedings brought by the father in the United Kingdom in 2009

- 24 Having discovered, on Friday 9 October 2009, that Ms Mercredi's home had been vacated, on the same day Mr Chaffe made an application, by telephone, to the Duty High Court Judge, Mr Justice Holman. Mr Justice Holman made an order requiring information on the whereabouts of the child (a location order) and directed the matter to come before him on 12 October 2009.
- 25 On 12 October 2009 Mr Chaffe filed applications for, inter alia, parental responsibility, shared residence and rights of access. On the same day, whilst Ms Mercredi had had no notice of Mr Chaffe's application and was not present or legally represented, Mr Justice Holman made an order which required Ms Mercredi to return Chloé to England and Wales. That order states, for the avoidance of doubt, that it does not require the child to be handed to her father or have any contact with him, the decisions in that regard being reserved for a further hearing.
- 26 It must be observed that the referring court proceeds from the premiss that it was 'seised', within the meaning of Article 16 of the Regulation, on 12 October 2009 at the latest. It is for that court to determine that matter, as necessary. In any event, it is for the Court of Justice to give a ruling in the light of the factual and legal considerations set out in the order for reference.

The proceedings brought by the mother and the father in France

- 27 On 28 October 2009 Ms Mercredi made an application to the tribunal de grande instance de Saint-Denis (Saint-Denis Regional Court, France) for exclusive parental responsibility and to fix Chloé's domicile at her address.
- 28 On 18 December 2009 Mr Chaffe made an application to that same court for Chloé's return to England under the 1980 Hague Convention. By a judgment of 15 March 2010, that application was dismissed on the basis that Mr Chaffe did not have 'rights of custody' in respect of Chloé when she left the United Kingdom. No appeal was entered against that judgment.
- 29 On 23 June 2010 the tribunal de grande instance de Saint-Denis delivered its judgment giving sole parental responsibility over Chloé to Ms Mercredi and establishing the child's habitual residence at the mother's address. It is apparent from the observations submitted by Mr Chaffe and by the French Government at the hearing that that judgment has not yet become final.

The outcome of the proceedings brought by the father in the United Kingdom in 2009

- 30 On 15 April 2010 the case brought by Mr Chaffe in October 2009 came before Mr Justice McFarlane. In Mr Chaffe's opinion, the High Court of Justice of England and Wales had jurisdiction on 9 October 2009 to make orders in respect of his daughter, since on that date Chloé had not lost her habitual residence in England. Further, he says that it is well established, according to the law of England and Wales, that an application for an order in relation to rights of custody may confer 'rights of custody' on a court. Mr Chaffe adds that, given that the English courts had been seised of an application relating to matters of parental responsibility, the tribunal de grande instance de Saint-Denis ought to have stayed its proceedings, pursuant to Article 19 of the Regulation, until such time as the jurisdiction of the English court had been established.
- 31 According to Ms Mercredi, the English courts had no jurisdiction to make orders in respect of Chloé because, from the date when Chloé was taken to the island of Réunion, she was no longer habitually resident in the United Kingdom, but in France.
- 32 Mr Justice McFarlane held that:
- the English court became seised of Chloé's case when the father made a telephone call to Mr Justice Holman;
 - from that time, the English court had rights of custody in respect of Chloé;
 - because orders had been made in his favour, the father also had rights of custody from that time;
 - Chloé was still habitually resident in England '...at the moment that both the English court and the father achieved rights of custody in relation to [Chloé] and the English court made orders requiring Chloé to remain in [the English court's] jurisdiction or be returned [there]' and,
 - therefore, on 9 October 2009, the English courts had jurisdiction to make orders in respect of Chloé.

The proceedings brought by the mother in the United Kingdom

- 33 On 12 July 2010 Ms Mercredi brought an appeal against the decisions of the High Court of Justice of England and Wales before the referring court.
- 34 In its reference for a preliminary ruling, the referring court states that, in order to be able to identify the court with jurisdiction, under European Union law, over matters of parental responsibility in respect of Chloé, it is necessary to obtain clarification of the tests which should be applied in order to determine where the child was habitually resident for the purposes of Articles 8 and 10 of the Regulation.
- 35 The referring court considers, moreover, that the answer to the question whether the High Court of Justice of England and Wales obtained rights of custody in respect of Chloé as a result of the applications made by her father depends on the meaning of 'institution or other body' within the meaning of the Regulation, the interpretation of which is a matter for the Court of Justice. Further, the referring court seeks guidance on how to assess the concurrent jurisdiction of the United Kingdom courts and the French courts to make orders on the applications of Chloé's father and mother respectively.

36 In those circumstances the Court of Appeal of England and Wales (Civil Division) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Please clarify the appropriate test for determining the habitual residence of a child for the purpose of:
- Article 8 of ... Regulation [No] 2201/2003;
 - Article 10 of ... Regulation [No] 2201/2003.
- (2) Is a court an “institution or other body” to which rights of custody can be attributed for the purposes of the provisions of ... Regulation [No] 2201/2003?
- (3) Does Article 10 have a continuing application after the courts of the requested Member State have rejected an application for the return of the child under [the 1980 Hague Convention] on the basis that Articles 3 and 5 are not made out?

In particular, how should a conflict between a determination of the requested State that the requirements of Articles 3 and 5 of [the 1980 Hague Convention] are not met and a determination of the requesting State that the requirements of Articles 3 and 5 are met be resolved?’

The urgent procedure

- 37 The referring court requested that this reference for a preliminary ruling be dealt with under the urgent procedure provided for in Article 104b of the Court’s Rules of Procedure.
- 38 The reason stated by the referring court for that request is that since the court with jurisdiction, under European Union law, over matters of parental responsibility for Chloé has not been identified, the applications brought by Chloé’s father seeking an order enabling him to maintain his relationship with his child cannot be dealt with.
- 39 In that regard, it must be observed that, according to the order for reference, the present case concerns a child who is 16 months old and who has been separated from her father for more than a year. Given that the child concerned is at a developmentally sensitive age, the continuation of the current situation, an additional feature of which is the considerable distance between where the father and child are living, might seriously harm her future relationship with her father.
- 40 In those circumstances, on 28 October 2010 the First Chamber of the Court decided, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court’s request that the reference for a preliminary ruling be dealt with under the urgent procedure.

Consideration of the questions referred for a preliminary ruling

The first question

- 41 By its first question, the referring court seeks clarification, in essence, on how properly to interpret the concept of ‘habitual residence’ for the purposes of Articles 8 and 10 of the Regulation, in order to determine which court has jurisdiction to make orders on matters relating to rights of custody, in particular where, as in the case in the main proceedings, the

dispute concerns an infant who is lawfully removed by her mother to a Member State other than that of her habitual residence and has been staying there only a few days when the court in the State of departure is seised.

- 42 In that regard, it must be stated, as a preliminary observation, that, under Article 8(1) of the Regulation, the test for determining the jurisdiction of a court of a Member State in matters of parental responsibility over a child who lawfully moves to another State is where that child is habitually resident at the time when that court is seised.
- 43 Under Article 16 of the Regulation, a court is deemed to be seised only where a document instituting proceedings or an equivalent document is lodged with that court. As stated in paragraph 24 of this judgment, on 9 October 2009 Mr Chaffe brought his case before the court concerned in the person of Mr Justice Holman, Duty High Court Judge, only by telephone. Accordingly, it was only on 12 October 2009, subject, as made clear in paragraph 26 of this judgment, to the referring court's determination that Mr Chaffe did not subsequently fail to take the steps he was required to take to have service effected on Ms Mercredi, that the High Court of Justice of England and Wales is deemed to have been seised. On that date, Chloé, who arrived on the island of Réunion on 8 October 2009, had been in that French department for four days.
- 44 In that regard, it must first be observed that the Regulation contains no definition of the concept of 'habitual residence'. It merely follows from the use of the adjective 'habitual' that the residence must have a certain permanence or regularity.
- 45 According to settled case-law, it follows from the need for a uniform application of European Union law and the principle of equality that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-98/07 *Nordania Finans and BG Factoring* [2008] ECR I-1281, paragraph 17; and Case C-523/07 *A* [2009] ECR I-2805, paragraph 34).
- 46 Since the articles of the Regulation which refer to 'habitual residence' make no express reference to the law of the Member States for the purpose of determining the meaning and scope of that concept, its meaning and scope must be determined in the light of the context of the Regulation's provisions and the objective pursued by it, in particular the objective stated in recital 12 in the preamble to the Regulation, that the grounds of jurisdiction established in the Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity.
- 47 To ensure that the best interests of the child are given the utmost consideration, the Court has previously ruled that the concept of 'habitual residence' under Article 8(1) of the Regulation corresponds to the place which reflects some degree of integration by the child in a social and family environment. That place must be established by the national court, taking account of all the circumstances of fact specific to each individual case (see *A*, paragraph 44).
- 48 Among the tests which should be applied by the national court to establish the place where a child is habitually resident, particular mention should be made of the conditions and reasons for the child's stay on the territory of a Member State, and the child's nationality (see *A*, paragraph 44).

- 49 As the Court explained, moreover, in paragraph 38 of *A*, in order to determine where a child is habitually resident, in addition to the physical presence of the child in a Member State, other factors must also make it clear that that presence is not in any way temporary or intermittent.
- 50 In that context, the Court has stated that the intention of the person with parental responsibility to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or rental of accommodation in the host Member State, may constitute an indicator of the transfer of the habitual residence (see *A*, paragraph 40).
- 51 In that regard, it must be stated that, in order to distinguish habitual residence from mere temporary presence, the former must as a general rule have a certain duration which reflects an adequate degree of permanence. However, the Regulation does not lay down any minimum duration. Before habitual residence can be transferred to the host State, it is of paramount importance that the person concerned has it in mind to establish there the permanent or habitual centre of his interests, with the intention that it should be of a lasting character. Accordingly, the duration of a stay can serve only as an indicator in the assessment of the permanence of the residence, and that assessment must be carried out in the light of all the circumstances of fact specific to the individual case.
- 52 In the main proceedings, the child's age, it may be added, is liable to be of particular importance.
- 53 The social and family environment of the child, which is fundamental in determining the place where the child is habitually resident, comprises various factors which vary according to the age of the child. The factors to be taken into account in the case of a child of school age are thus not the same as those to be considered in the case of a child who has left school and are again not the same as those relevant to an infant.
- 54 As a general rule, the environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of.
- 55 That is even more true where the child concerned is an infant. An infant necessarily shares the social and family environment of the circle of people on whom he or she is dependent. Consequently, where, as in the main proceedings, the infant is in fact looked after by her mother, it is necessary to assess the mother's integration in her social and family environment. In that regard, the tests stated in the Court's case-law, such as the reasons for the move by the child's mother to another Member State, the languages known to the mother or again her geographic and family origins may become relevant.
- 56 It follows from all of the foregoing that the answer to the first question is that the concept of 'habitual residence', for the purposes of Articles 8 and 10 of the Regulation, must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother's move to that State and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the

habitual residence of the child, taking account of all the circumstances of fact specific to each individual case.

- 57 If the application of the abovementioned tests were, in the case in the main proceedings, to lead to the conclusion that the child's habitual residence cannot be established, which court has jurisdiction would have to be determined on the basis of the criterion of the child's presence, under Article 13 of the Regulation.

The second question

- 58 By its second question, the referring court seeks to ascertain whether the concept of 'institution or other body', which for the purposes of the provisions of the Regulation may hold rights of custody, must be interpreted as encompassing the concept of 'court', within the meaning of Article 2(1) of the Regulation.
- 59 In that regard, it must be observed that the referring court has not specified on which provisions of the Regulation it seeks guidance as regards how that concept is to be interpreted nor has it explained why that interpretation is required by it in order to deliver its judgment. It is however evident that that concept is to be found in the wording of Articles 10 and 11 of the Regulation. Those provisions relate to jurisdiction in cases of child abduction and are therefore applicable in cases of wrongful removal or retention of a child, while Article 9 of the Regulation is concerned with cases where a child moves lawfully from one Member State to another.
- 60 As stated in paragraph 23 of this judgment, it is common ground that the removal of Chloé to the island of Réunion was lawful.
- 61 It follows that Article 10 of the Regulation cannot apply. Consequently, there is no need to reply to the second question.

The third question

- 62 By its third question, the referring court seeks to ascertain, in essence, as is clear in particular from paragraphs 1.4 and 4.6 of the order for reference, whether judgments of a court of a Member State which refuse to order the prompt return of a child under the 1980 Hague Convention to the jurisdiction of a court of another Member State and which concern parental responsibility for that child have any effect on judgments which have to be delivered in that other Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.

The judgment of the tribunal de grande instance de Saint-Denis of 15 March 2010

- 63 As stated in paragraph 28 of this judgment, the application brought by Chloé's father before the tribunal de grande instance de Saint-Denis was based on the provisions of the 1980 Hague Convention. Article 1 of that convention states that its objective is to secure the prompt return of children wrongfully removed to or retained in any Contracting State.
- 64 The tribunal de grande instance de Saint-Denis rejected the application by Chloé's father for her return to the United Kingdom 'since no evidence [was] given that when Chloé Mercredi was removed Mr Richard Chaffe had custody rights which were actually exercised or would have been so exercised but for the removal'.

- 65 In that regard, it is clear that, under Article 19 of the 1980 Hague Convention, the court's judgment of 15 March 2010 has no effect on determining the merits of rights of custody, even if that judgment has become final, as stated in paragraph 28 of this judgment.
- 66 It follows that, if the referring court were to decide, applying the tests set out in the answer to the first question, that it has jurisdiction, under Article 8 of the Regulation, in matters of parental responsibility over Chloé, the judgment of the tribunal de grande instance de Saint-Denis of 15 March 2010 would have no effect on the judgment which the referring court would be required to deliver.
- The judgment of the tribunal de grande instance de Saint-Denis of 23 June 2010
- 67 As regards the judgment of the tribunal de grande instance de Saint-Denis of 23 June 2010, which, as stated in paragraph 29 of this judgment, has not yet become final, it must be observed at the outset that the referring court will be faced, in due course, with the fact that the judgment delivered by the tribunal de grande instance was based not on the 1980 Hague Convention, but likewise on the Regulation.
- 68 In such a case of conflict between two courts of different Member States, before which, on the basis of the Regulation, proceedings relating to parental responsibility over a child with the same cause of action have been brought, Article 19(2) of the Regulation is applicable. Under that article, the court second seised is to stay its proceedings until such time as the jurisdiction of the court first seised is established.
- 69 Accordingly, since the High Court of Justice of England and Wales was seised on 12 October 2009 of an action brought by the child's father requesting, inter alia, that parental responsibility be awarded to him, the tribunal de grande instance de Saint-Denis, which was seised by the child's mother on 28 October 2009, had no power to rule on the action brought by the mother.
- 70 It follows from the foregoing that, if the referring court were to decide, by applying the tests listed in the answer to the first question, that it has jurisdiction, under Article 8 of the Regulation, in matters of parental responsibility over Chloé, neither the judgment of the tribunal de grande instance de Saint-Denis of 15 March 2010 nor that of 23 June 2010 has any effect on the judgment which has to be delivered by the referring court.
- 71 Consequently, the answer to the third question is that judgments of a court of a Member State which refuse to order the prompt return of a child under the 1980 Hague Convention to the jurisdiction of a court of another Member State and which concern parental responsibility for that child have no effect on judgments which have to be delivered in that other Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.

Costs

- 72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

- 1. The concept of ‘habitual residence’, for the purposes of Articles 8 and 10 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 such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother’s move to that State and, second, with particular reference to the child’s age, the mother’s geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case.**

If the application of the abovementioned tests were, in the case in the main proceedings, to lead to the conclusion that the child’s habitual residence cannot be established, which court has jurisdiction would have to be determined on the basis of the criterion of the child’s presence, under Article 13 of the Regulation.

- 2. Judgments of a court of a Member State which refuse to order the prompt return of a child under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction to the jurisdiction of a court of another Member State and which concern parental responsibility for that child have no effect on judgments which have to be delivered in that other Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.**

[Signatures]

* Language of the case: English.