

JUDGMENT OF THE COURT (Fourth Chamber)

9 January 2015 (*)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility — Child abduction — Regulation (EC) No 2201/2003 — Article 11(7) and (8))

In Case C-498/14 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Bruxelles (Belgium), made by decision of 7 November 2014, received at the Court on 10 November 2014, in the proceedings

David Bradbrooke

v

Anna Aleksandrowicz,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, K. Jürimaä, J. Malenovský, M. Safjan and A. Prechal, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the request of 7 November 2014 by the referring court, received at the Court on 10 November 2014, that the reference for a preliminary ruling be dealt with under an urgent procedure, in accordance with Article 107 of the Court's Rules of Procedure,

having regard to the decision of 18 November 2014 of the Fourth Chamber granting that request,

having regard to the written procedure and further to the hearing on 11 December 2014,

after considering the observations submitted on behalf of:

- the Belgian Government, by C. Pochet, J.-C. Halleux and L. Van den Broeck, acting as Agents,
- the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Advocate General,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11(7) and (8) 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 request has been made in proceedings between Mr Bradbrooke and Ms Aleksandrowicz concerning parental responsibility for their son Antoni, who has been retained in Poland by Ms Aleksandrowicz.

Legal context

The 1980 Hague Convention

- 3 Article 3 of the Convention on the Civil Aspects of International Child Abduction concluded at the Hague on 25 October 1980 (‘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) 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 Article 12 of the 1980 Hague Convention is worded as follows:

‘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.

...’

- 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.

...’

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

EU law

7 Recitals 12, 17, 18 and 33 in the preamble to the Regulation are worded as follows:

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

...

(17) 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.

(18) Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it should inform the court having jurisdiction or central authority in the Member State where the child was habitually resident prior to the wrongful removal or retention. Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law.

...

(33) This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union [‘the Charter’]. In particular, it seeks to ensure full respect for the fundamental rights of the child as recognised in Article 24 of [the Charter].’

8 Article 1(1) and (2) of the Regulation provide:

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

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

(a) rights of custody and rights of access;

...’

9 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;
8. the term “holder of parental responsibility” shall mean any person having parental responsibility over a child;
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 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, headed ‘General jurisdiction’, provides:

- ‘1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.
2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.’

11 Article 11 of the Regulation, headed ‘Return of the child’, is worded as follows:

- ‘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.

...

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.

...

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.’

12 Article 15(1) of the Regulation, headed ‘Transfer to a court better placed to hear the case’, provides:

‘By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

- (a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
- (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.’

Belgian law

13 Article 1322*i* of the Belgian Judicial Code, as amended by the loi du 30 juillet 2013 portant création du tribunal de la famille [law of 30 July 2013 on the creation of a family court] (‘the Judicial Code’), is worded as follows:

‘§ 1. An order on the non-return of a child issued by a foreign court, together with all accompanying documents, transmitted to the central Belgian authority in accordance with Article 11(6) of [the Regulation], shall be sent by registered post to the Registry of the court of first instance attached to the court of appeal within whose jurisdiction the child was habitually resident immediately before the wrongful removal or retention.

§ 2. Upon receipt of the documents, and by no later than the third working day after receipt, the Registrar shall, by judicial notification, communicate to the parties and to the office of the public prosecutor the information referred to in Article 11(7) of [the Regulation]. The judicial notification shall contain the following information:

- 1° the text of Article 11 of [the Regulation];
- 2° an invitation to the parties to lodge submissions at the Registry within three months of the notification. The lodging of submissions shall constitute the bringing of an action before the family court of first instance.

§ 3. If at least one of the parties lodges submissions, the Registrar shall forthwith invite the parties to attend a hearing on the first available date.

§ 4. The bringing of an action before the family court shall give rise to the suspension of any proceedings commenced before courts or tribunals relating to a dispute regarding matters of parental responsibility or a related dispute.

§ 5. If the parties do not make submissions to the court within the period laid down in § 2(2) the family court shall issue an order recording the absence of submissions, and the Registrar shall give notice of that order to the parties, to the central authority and to the [public prosecutor].

§ 6. A judgment on the question of the custody of the child delivered in accordance with Article 11(8) of [the Regulation] may, at the request of one of the parties, also deal with rights of access in the event that the child's return to Belgium is ordered in that judgment.

§ 7. The Registrar shall serve notice of the judgment referred to in § 6 on the parties, the [public prosecutor] and the Belgian authority by judicial notification.

§ 8. The Belgian central authority has sole responsibility to transmit the judgment and the accompanying documents to the competent authorities of the State in which the order on non-return was delivered.

§ 9. For the application of Article 11(7) and (8) of [the Regulation], the child shall be heard in accordance with Article 42(2)(a) of that regulation and Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.'

The main proceedings and the question referred for a preliminary ruling

14 Antoni is a child born in Poland on 21 December 2011, his parents being Ms Aleksandrowicz, who is Polish, and Mr Bradbrooke, who is British and who resides in Belgium.

15 The mother and the child moved to Brussels (Belgium) in July and August 2012, when the child was seven months old. From that date, the child was living with his mother and was regularly in contact with his father.

16 In August and September 2013 the mother and the father attended local mediation services with a view to agreeing accommodation rights with regard to the child, but no agreement was reached.

17 On 16 October 2013 the mother informed the father that she was taking the child on holiday to Poland.

18 By application lodged on 18 October 2013, the father brought an action before the tribunal de la jeunesse de Bruxelles (the court for young persons in Brussels) seeking a ruling on, inter alia, how parental authority over the child was to be exercised and accommodation rights with respect to the child.

19 By a summons of 23 October 2013, the father brought an action before the judge hearing applications for interim measures claiming provisionally and as a matter of urgency that secondary accommodation rights in respect of the child should be granted to him.

20 When the father learned that the mother had no intention of returning to Belgium with their child, he amended his claims before the judge hearing applications for interim measures and before the tribunal de la jeunesse de Bruxelles and sought, inter alia, the exclusive exercise of parental authority, primary accommodation rights in respect of the child and an order prohibiting the mother from leaving Belgian territory with the child. For her part, the mother challenged the international jurisdiction of the Belgian courts, seeking the application of Article 15 of the Regulation and the transfer of the case to the Polish courts, which are particularly connected to the child's situation, since the child is residing in Poland and has in the interim been registered in a nursery school.

21 By order of 19 December 2013 the judge hearing applications for interim measures declared that he had

jurisdiction and, provisionally and in the interests of urgency, upheld the father's claims.

- 22 By judgment of 26 March 2014, the tribunal de la jeunesse de Bruxelles, after confirming that it had jurisdiction, held that parental authority should be exercised jointly by the parents, granted to the mother primary accommodation rights in respect of the child and temporarily granted to the father secondary accommodation rights on alternate week-ends, it being his responsibility to travel to Poland.
- 23 Since the father considered that that judgment ratified the wrongful removal of their child to Poland and accorded to that wrongful act a positive legal consequence, the father brought an appeal against that judgment before the cour d'appel de Bruxelles, seeking, principally, the exclusive exercise of parental authority and primary accommodation rights in respect of the child.
- 24 At the same as bringing proceedings on the substance before the Belgian courts, on 20 November 2013 the father brought an application before the Belgian central authority for the return forthwith of the child to Belgium under the return procedure established by the 1980 Hague Convention.
- 25 On 13 February 2014 the district court of Płońsk (Poland) declared that the child had been wrongfully removed by his mother and that the child had been habitually resident in Belgium before the removal. The court none the less decided to issue an order on the non-return of the child on the basis of Article 13b of the 1980 Hague Convention.
- 26 The Belgian central authority, which received from the Polish central authority a copy of that non-return order and the relevant documents, lodged that file, on 10 April 2014, at the registry of the tribunal de première instance francophone de Bruxelles [French language court of first instance, Brussels], which court invited the parties to lodge submissions. The effect of the father's lodging of submissions with that court, on 9 July 2014, was to seise the President of the tribunal de première instance francophone de Bruxelles, which court had jurisdiction, in accordance with Article 1322*i* of the Judicial Code, in the version applicable prior to the entry into force of the loi du 30 juillet 2013 portant création du tribunal de la famille [law of 30 July 2013 on the creation of a family court], to examine the question of custody with respect to the child, pursuant to Article 11(6) and (7) of the Regulation. Under Article 1322*i* of the Judicial Code, the bringing of an action before that court entails that proceedings commenced before courts and tribunals seised of a dispute concerning parental responsibility or a related dispute are to be stayed. After the entry into force of the 2013 legislation, the case was reallocated to the tribunal de la famille de Bruxelles [the family court in Brussels].
- 27 By an interlocutory judgment of 30 July 2014, delivered in the absence of the mother, the cour d'appel de Bruxelles upheld the judgment delivered by the tribunal de la jeunesse de Bruxelles in that it declared that the Belgian court had international jurisdiction to rule on the substance of questions relating to parental responsibility. On the other hand, holding that an action based on Article 11(6) and (7) of the Regulation had in the interim been brought before the President of the tribunal de première instance francophone de Bruxelles, the cour d'appel stayed its ruling on the substance of the dispute and requested the Belgian central authority to lodge in the court file for the proceedings before it the entire file which that authority had lodged, under Article 1322*i* of the Judicial Code, at the registry of the tribunal de première instance francophone de Bruxelles. Last, pending the outcome, before the latter court, of the procedure set out in Article 11(6) to (8) of the Regulation, the cour d'appel de Bruxelles made a provisional ruling and ordered the mother to disclose to the father the address of her new place of residence with the child and laid down arrangements for the exercise of the father's right of access to the child.
- 28 Since the mother refuses to disclose the address where she is living with the child, the father has not been able to exercise the right of access granted to him by the cour d'appel de Bruxelles.
- 29 At the same time as proceedings were brought by the father in Belgium, the mother brought a number of legal actions in Poland relating to parental responsibility. The Polish courts, after finding that the Belgian court had been first seised and had declared that it had international jurisdiction, held that they had no jurisdiction in the matter.

- 30 By final judgment delivered on 8 October 2014, the tribunal de la famille de Bruxelles referred the case to the cour d'appel de Bruxelles, on the ground that the Belgian courts had been seised by the father before the wrongful removal of the child for the purposes of Article 11(7) of the Regulation and that the substantive proceedings were pending before the cour d'appel.
- 31 The cour d'appel de Bruxelles considers that, under Belgian law, it cannot regard itself as seised of the procedure set out in Article 11(6) to (8) of the Regulation by the referral judgment delivered by the tribunal de la famille de Bruxelles on 8 October 2014. The cour d'appel considers that it could be seised of that procedure only by an appeal being brought by one of the parties against that judgment.
- 32 The cour d'appel seeks to ascertain whether, taking into account the requirements of expedition and efficiency which must be met by the procedure set out in Article 11(6) to (8) of the Regulation, Article 11(7) precludes the law of a Member State from allocating to a specialised court exclusive jurisdiction to deal with such a procedure and providing at the same time that all proceedings relating to parental authority commenced before a court or tribunal are to be stayed from the moment when that specialised court is seised.
- 33 Accordingly, the cour d'appel de Bruxelles considers that it is necessary to refer to the Court of Justice for a preliminary ruling a question on the interpretation of Article 11(7) and (8) of the Regulation, in order to be able to determine which Belgian court has jurisdiction under EU law and, in particular, to decide whether it is for the cour d'appel itself, seised of the substantive proceedings relating to parental responsibility, to give a ruling in accordance with the procedure set out in Article 11(6) to (8) of the Regulation.
- 34 In those circumstances, the cour d'appel de Bruxelles decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘Are the provisions in Article 11(7) and (8) of the Regulation to be interpreted as precluding a Member State from:

- giving preference to the specialisation of courts in situations of parental child abduction with respect to the procedure provided for in those provisions even where a court or tribunal has already been seised of proceedings concerning the substance of parental responsibility in relation to the child?
- removing, from the court seised of proceedings on the substance of parental responsibility in relation to the child, jurisdiction to give judgment on the custody of the child, even though that court has jurisdiction, under international and national law, to give judgment on questions of parental responsibility in relation to the child?’

The urgent preliminary ruling procedure

- 35 The cour d'appel de Bruxelles requested that the reference for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court's Rules of Procedure, because of the extreme urgency of the main proceedings. Those proceedings relate to the exercise of parental authority and custody with respect to a child in circumstances where there is a risk of irreparable damage to the relationship between the father and his son, the son being currently deprived of any contact with his father.
- 36 It is clear, first, that the reference for a preliminary ruling concerns the interpretation of the Regulation, which was adopted in particular on the basis of Article 61(c) EC, now Article 67 TFEU, which is in Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice, and consequently that reference falls within the scope of the urgent preliminary ruling procedure defined in Article 107 of the Rules of Procedure.
- 37 Secondly, it is stated in the order for reference that Ms Aleksandrowicz refuses to comply with the

judgment delivered by the cour d'appel de Bruxelles on 30 July 2014, whereby that court, first, ordered Ms Aleksandrowicz to disclose to Mr Bradbrooke, within eight days from the date of notification of that judgment, the address where she is now residing with the child, and, second, held that Mr Bradbrooke was to have rights of access to Antoni on alternate weekends, if the parties did not make other arrangements.

38 In that regard, it must be stated that this case concerns a three-year-old child who has been separated from his father for more than a year. Consequently, any continuation of the current situation, an additional feature of which is the significant distance between where the father resides and where the child is living, could seriously harm the child's future relationship with his father.

39 In those circumstances the Fourth Chamber of the Court decided, on the basis of Article 108 of the Rules of Procedure, on the Judge-Rapporteur's proposal 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 question referred for a preliminary ruling

40 By its question, the referring court seeks, in essence, to ascertain whether Article 11(7) and (8) of the Regulation must be interpreted as precluding a Member State from allocating to a specialised court the jurisdiction to examine questions relating to return or custody of a child in the context of the procedure laid down by those provisions, even where proceedings on the substance of parental responsibility with respect to the child have already been brought before a court or tribunal.

41 It must be recalled that the object of the Regulation is not to unify the rules of substantive law and of procedure of the different Member States. Nevertheless, it is important that the application of those national rules does not impair the Regulation's effectiveness (see, to that effect, the judgment in *Rinau*, C-195/08 PPU, EU:C:2008:406, paragraph 82).

42 In that context, it must also be pointed out that it is stated in recital 33 in the preamble to the Regulation that it recognises the fundamental rights and observes the principles of the Charter. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter, which include the right to maintain on a regular basis personal relationships and direct contact with both of his or her parents (see, to that effect, the judgment in *McB*, C-400/10 PPU, EU:C:2010:582, paragraph 60).

43 Article 11(6) of the Regulation states that if, following the abduction of a child, a court issues an order on non-return pursuant to Article 13 of the 1980 Hague Convention, that court must immediately transmit a copy of the court order on non-return and the relevant documents to the court with jurisdiction or the central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. It must be observed that the explicit reference to national law indicates, inter alia, that it is for the Member State where the child was habitually resident immediately before the removal to determine, with due regard to the objectives of the Regulation, which court has jurisdiction to rule on the issue of the return of the child, after an order on non-return has been issued in the Member State to which the child was removed.

44 As regards Article 11(7) of the Regulation, it provides that, where a court order on non-return has been adopted, unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised, the court or central authority which receives the information relating to that court order must notify it to the parties and invite them to make submissions to the court, so that that court can examine the question of custody of the child. However, neither that provision of the Regulation nor Article 11(6) thereof identifies the national court which has jurisdiction to examine the question of custody of the child after an order on non-return has been issued. The same is true of Article 11(8) of the Regulation.

- 45 In that regard, while, pursuant to Article 11(7) of the Regulation, that court or central authority must serve on the parties, inter alia, a copy of the order on non-return issued under Article 13 of the 1980 Hague Convention, in order to permit, where appropriate, examination of the question of custody of the child, unless the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised, the question whether, where those courts have indeed been seised, the court determined by that Member State to have jurisdiction with respect to that examination can be required to cede jurisdiction to other courts in the same Member State is a matter of national law.
- 46 As stated by the Advocate General in point 60 of his View, Article 11(7) of the Regulation represents not a legal rule designed to determine which court has jurisdiction, but rather a legal rule of a technical nature the primary purpose of which is to determine the arrangements for the notification of information relating to the order on non-return.
- 47 Further, it may be recalled that, in accordance with the Court's case-law, it cannot be inferred from Article 11(7) of the Regulation that a decision on the custody of the child is a prerequisite for the adoption, where appropriate, of a decision ordering the return of the child. The purpose of the latter decision, an interim measure, is also to contribute to the achievement of the final objective of the administrative and judicial procedures, namely regularisation of the child's situation (see, to that effect, the judgment in *Povse*, C-211/10 PPU, EU:C:2010:400, paragraph 53).
- 48 While the Belgian Government argues that, under national procedural law, the specialised court seised of the question of return of the child under Article 11(6) to (8) of the Regulation could, at the request of one of the parties, refer the case to the cour d'appel seised of the substantive dispute relating to parental responsibility, so that the latter court could rule on both the question of return and the question of custody with respect to the child, that point concerns the interpretation of national law and is outside the jurisdiction of the Court of Justice. Consequently that point must be decided by the Belgian courts.
- 49 It follows from the foregoing that the determination of the national court which has jurisdiction to examine questions of return or custody with respect to the child in the context of the procedure set out in Article 11(6) to (8) of the Regulation is a matter of choice by the Member States, even in the situation where, at the time when a decision on the non-return of a child is notified, a court or a tribunal has already been seised of substantive proceedings relating to parental responsibility over that child.
- 50 However, as stated in paragraph 41 of this judgment, that choice must not impair the effectiveness of the Regulation.
- 51 The fact that a Member State allocates to a specialised court the jurisdiction to examine questions of return or custody with respect to a child in the context of the procedure set out in Article 11(7) and (8) of the Regulation, even where proceedings on the substance of parental responsibility with respect to the child have already, separately, been brought before a court or tribunal, cannot, as such, impair the effectiveness of the Regulation.
- 52 However, it must be ensured that, in circumstances such as those of the main proceedings, such an allocation of jurisdiction is compatible with the child's fundamental rights as stated in Article 24 of the Charter and, in particular, with the objective that procedures should be expeditious.
- 53 As regards the objective of expedition, it must be recalled that when applying the relevant provisions of domestic law, the national court called on to interpret them is bound to do so with due regard to EU law and in particular the Regulation.
- 54 In the light of the foregoing, the answer to the question referred is that Article 11(7) and (8) of the Regulation must be interpreted as not precluding, as a general rule, a Member State from allocating to a specialised court the jurisdiction to examine questions of return or custody with respect to a child in the

context of the procedure set out in those provisions, even where proceedings on the substance of parental responsibility with respect to the child have already, separately, been brought before a court or tribunal.

Costs

- 55 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 (Fourth Chamber) hereby rules:

Article 11(7) and (8) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as not precluding, as a general rule, a Member State from allocating to a specialised court the jurisdiction to examine questions of return or custody with respect to a child in the context of the procedure set out in those provisions, even where proceedings on the substance of parental responsibility with respect to the child have already, separately, been brought before a court or tribunal.

[Signatures]

*Language of the case: French.