# First ECJ Judgment on Brussels II bis

Today, the ECJ delivered its first judgment on the Brussels II *bis* Regulation (C-435/06, *Applicant C*).

The Finnish *Korkein Hallinto-oikeus* had referred the **following questions** to the ECJ for a preliminary ruling:

> *1. (a) Does Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, (the Brussels 11a Regulation) apply, in a case such as the present, to the enforcement of a public law decision in connection with child welfare, relating to the immediate taking into custody of a child and his or her placement in a foster family outside the home, taken as a single decision, in its entirety;*
>
> *(b) or solely to that part of the decision relating to placement outside the home in a foster family, having regard to the provision in Article 1(2)(d) of the regulation;*
>
> *(c) and, in the latter case, is the Brussels IIa Regulation applicable to a decision on placement contained in one on taking into custody, even if the decision on custody itself, on which the placement decision is dependent, is subject to legislation, based on the mutual recognition and enforcement of judgments and administrative decisions, that has been harmonised in cooperation between the Member States concerned?*
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> *2. If the answer to Question 1(a) is in the affirmative, is it possible, given that the Regulation takes no account of the legislation harmonised by the Nordic Council on the recognition and enforcement of public law decisions on custody, as described above, but solely of a corresponding private law convention, nevertheless to apply this harmonised legislation based on the direct recognition and enforcement of administrative decisions as a form of cooperation between administrative authorities to the taking into custody of a child?*

*3. If the answer to Question 1(a) is in the affirmative and that to Question 2 is in the negative, does the Brussels IIa Regulation apply temporally to a case, taking account of Articles 72 and 64(2) of the regulation and the abovementioned harmonised Nordic legislation on public law decisions on custody, if in Sweden the administrative authorities took their decision both on immediate taking into custody and on placement with a family on 23.2.2005 and submitted their decision on immediate custody to the administrative court for confirmation on 25.2.2005, and that court accordingly confirmed the decision on 3.3.2005?*

The **Court** now held with regard to **Question 1 (a)**:

***Article 1(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004, is to be interpreted to the effect that a single decision ordering a child to be taken into care and placed outside his original home in a foster family is covered by the term 'civil matters' for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.***

With regard to the first question, the Court examined first, whether a decision which orders the immediate taking into care of a child relates to parental responsibility (para. 25 et seq.). Here the Court held that the fact that the taking of a child into care is not explicitly listed in Art. 1 (2) of the Regulation cannot lead to the exclusion of these matters from the scope of the Brussels II *bis* Regulation (para. 28 et seq.). According to the Court, the wording of Art. 1 (2) ("in particular") shows that the provision has to be understood as a guide and is not exhaustive (para. 30). Further, this point of view is supported *inter alia* by Recital 5 in the Regulation's preamble according to which "all decisions on parental responsibility, including measures for the protection of the child" shall be covered (para. 31). Secondly, the Court examined whether a decision ordering the immediate taking into care and placement of a child which was adopted in the context of rules of public law constitutes a "civil matter" in terms of Art. 1 (1)

Brussels II *bis*. In this respect the Court stressed that the term of "civil matters" has to be interpreted in view of the objectives of the Regulation which would be impaired, were decisions to be excluded from the Regulation only because they are governed by public law in some Member States (para. 45). Thus, the term of "civil matters" has to be interpreted autonomously (para. 46).

In respect of **Question 2** the Court held:

> ***Regulation No 2201/2003, as amended by Regulation No 2116/2004, is to be interpreted as meaning that harmonised national legislation on the recognition and enforcement of administrative decisions on the taking into care and placement of persons, adopted in the context of Nordic Cooperation, may not be applied to a decision to take a child into care that falls within the scope of that regulation.***

Here the Court emphasised that Art. 59 (2) (a) Brussels II *bis* constitutes the only exception from the general rule of Art. 59 (1) Brussels II *bis*, according to which the Regulation supersedes conventions concluded between the Member States regarding matters governed by the Regulation and that this exception has to be interpreted strictly (para. 60).

Regarding **Question 3** the Court held:

> ***Subject to the factual assessment which is a matter for the national court alone, Regulation No 2201/2003, as amended by Regulation No 2116/2004, is to be interpreted as applying ratione temporis in a case such as that in the main proceedings.***

In respect of this last question the Court referred to Art. 64 and Art. 72 Brussel II *bis*, which show that the Regulation applies in principle only to legal proceedings instituted after its date of application, i.e. 1 March 2005 (para. 68). However, Art. 64 (2) of the Regulation provides that judgments given after the date of application of Brussels II *bis* in proceedings instituted before that date but after the entry into force of the Brussels II Regulation (Regulation 1347/2000) shall be recognised and enforced in accordance with the provisions of Chapter III of Brussels II *bis* if jurisdiction was founded on rules which accorded with those provided for either in Chapter II or in Brussels II or in a convention concluded

between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted. According to the Court, these requirements are, subject to factual assessment which is a matter for the national court, met in the present case (para. 77).

*See for the reference, the opinion and the full judgment the website of the ECJ and for the background of the case also our previous post on Advocate General Kokott' s opinion which can be found here.*