

New Reference for a Preliminary Ruling on Brussels II bis

Following the cases of *Applicant C* and *Sundelind Lopez*, a third reference for a preliminary ruling on Brussels II *bis* has been referred to the ECJ – again (as *Applicant C*) by the Finnish *Korkein Hallinto-oikeus* (Case C-523/07, *Applicant A*).

The present case concerns children who have their habitual residence in Sweden, live transitionally in Finland and became Swedish citizens during the proceedings. Since the Finnish court had doubts whether it can exercise international jurisdiction under the Brussels II *bis* Regulation to take measures in connection with child protection due to the childrens' alleged permanent residence in Sweden, the court has 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 IIa Regulation) apply to the enforcement, such as in the present case, of a public-law decision made in connection with child protection, as a single decision, concerning the immediate taking into care of a child and his or her placement outside the home, in its entirety,

(b) or, having regard to the provision in Article 1(2)(d) of the regulation, only to the part of the decision relating to the placement outside the home?

2 How is the concept of habitual residence in Article 8(1) of the regulation, like the associated Article 13(1), to be interpreted in Community law, bearing in mind in particular the situation in which a child has a permanent residence in one Member State but is staying in another Member State, carrying on a peripatetic life there?

3(a) If it is considered that the child's habitual residence is not in the latter Member State, on what conditions may an urgent measure (taking into care) nevertheless be taken in that Member State on the basis of Article 20(1) of the regulation?

(b) Is a protective measure within the meaning of Article 20(1) of the regulation solely a measure which can be taken under national law, and are the provisions of national law concerning that measure binding when the article is applied?

(c) Must the case, after the taking of the protective measure, be transferred of the court's own motion to the court of the Member State with jurisdiction?

4 If the court of a Member State has no jurisdiction at all, must it dismiss the case as inadmissible or transfer it to the court of the other Member State?

In the meantime, after this new reference has been lodged on 23 November 2007, the Court already had to deal with the issue raised in the first question of the present reference in the context of case C-435/06, *Applicant C*. In its judgment of 27 November 2007 the Court held in this regard that:

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.

The Finnish court has decided to refer the question to the ECJ again being aware of the first reference which had still been pending at the time the second reference was made. This might be explained by the fact that the Finnish court saw a need for clarification by the ECJ also with regard to the other questions and therefore decided not to wait for the ECJ's decision on the first reference in case *Applicant C*.

See with regard to case C-435/06, Applicant C, also our previous posts on the judgment as well as the Advocate General's opinion.

(Many thanks to Dr. Helena Raulus, Erasmus University Rotterdam for valuable information on the Finnish referring decision.)