

New Reference on Brussels II bis

Another reference for a preliminary ruling on the **Brussels II bis Regulation** has been referred to the ECJ, this time by the Republic of Lithuania.

The Lithuanian court (*Lietuvos Aukščiausioji Teisma*) has referred the following questions to the ECJ:

Can an interested party within the meaning of Article 21 of Council Regulation (EC) No 2201/2003 apply for non-recognition of a judicial decision if no application has been submitted for recognition of that decision?

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 Regulation No 2201/2003, which states that ‘... 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’?

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 that that holder return to the State of origin the child staying with that holder, and in respect of which the certificate provided for in Article 42 of Regulation No 2201/2003 has been issued, required to examine that application on the basis of the provisions contained in Sections 1 and 2 of Chapter III of Regulation No 2201/2003, as provided for in Article 40(2) of that regulation?

What meaning is to be attached to the condition laid down in Article 21(3) of Regulation No 2201/2003 (‘Without prejudice to Section 4 of this Chapter’)?

Do the adoption of a decision that the child be returned and the issue of a certificate under Article 42 of Regulation No 2201/2003 in the court of the Member State of origin, after a court of the Member State in which the child is being unlawfully kept has taken a decision that the child be returned to his or her State of origin, comply with the objectives of and procedures under Regulation No 2201/2003?

Does the prohibition in Article 24 of Regulation No 2201/2003 of review of the jurisdiction of the court of the Member State of origin mean that, if it has received an application for recognition or non-recognition of a decision of a foreign court and is unable to establish the jurisdiction of the court of the Member State of origin and unable to identify any other grounds set out in Article 23 of Regulation No 2201/2003 as a basis for non-recognition of decisions, the national court is obliged to recognise the decision of the court of the Member State of origin ordering the child's return in the case where 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 case is pending as C-195/08 (*Inga Rinau*)

(Many thanks again to Jens Karsten (Brussels) for information on this case.)

Update: it seems that *Rinau* is the first reference to the ECJ to use the “urgent preliminary reference procedure” - more information can be found on the excellent EU Law Blog (which is where we spotted it). The effect of that is that the hearing is due before the Third Chamber on 26th June 2008, *less than two months* after it was first lodged.

See for more information on the urgent preliminary reference procedure the following press release of the Commission which can be found [here](#).