

On Regulation (EC) no 2201/2003, art. 20

Among ECJ decisions on Regulation (EC) no. 2201/03, there are already two, both of 2009, affecting art. 20; and another one is pending – aff. 256/09. Such situation highlights the importance of an article which has not yet been paid the attention it deserves: perhaps because much interest has already been given to its antecedent in the Convention on the jurisdiction and enforcement of judgments in civil and commercial matters of 27 September 1968 (art. 24-art. 31 of Regulation no. 44/01). But not everything that has been said about art. 24, or about art. 12 of Regulation (EC) no. 1347/00, forerunner of the current rule, applies in relation to the latter. For example, art. 20 includes two special requirements not listed in art. 24 of the Brussels Convention: urgency, and that the measure is adopted “in respect of persons or assets in that State”. According to academics these textual differences do not necessarily carry consequences in terms of a different understanding of art. 20 Reg. 2201/03 and art. 31 Reg. 44/01. But the assert may be discussed: the Borrás Report to the 1998 Convention that precedes Reg. 1347/00, stated in no. 59 that the “presence” condition (persons or assets in the State) is laid down in order to limit the effect of the measures to the State in which they are adopted, whilst measures under art. 24 of the Brussels Convention do not suffer such limitation on their scope.

Art. 20 is also said to closely follow art. 12 of Regulation (EC) no 1347/00: in fact, that’s the only useful information provided about the article in the Explanatory Report of the Proposal submitted in 2002 by the Commission [COM (2002) 222 final / 2 of 17 May 2002]. However, one may doubt whether this is true. Let’s take the question of the scope of both provisions: art. 12 is said – as it was also said before about art. 12 of the 1998 Convention – to extend to matters not covered by the Regulation. The explanation was as follows: as the main issue in Regulation (EC) no 1347/00 was that of the couple’s marital status, a provision on measures concerning assets could not be understood without extending art. 12 beyond the material scope of the Community instrument. In relation to art. 20 of the current Regulation, and in light of the prominence acquired by parental responsibility, this point should be reconsidered: art. 20 could refer only to measures concerning the child’s property, taken in the context of matters covered under the

term “parental responsibility”.

The truth is that art. 20 still raises many doubts. There is no definition of “provisional or protective *measures*”, and it is debatable that the jurisprudence of the ECJ on art. 24 Brussels Convention will be enough to solve this absence. Nor is clear what *provisional* means, although we must probably rule out the ECJ’s idea in aff. C-391/95, *Van Uden*, where “provisional” was said to indicate “return to the original status quo”. The “urgency” condition, which must concur even if not required by the applicable national law, raises several questions: what’s an emergency situation, and whether the urgency is a condition to be fulfilled only when measures are adopted by the support court, or also when they stem from the courts having jurisdiction as to the substance of the matter. The “in respect of persons or assets in the State” condition is also a controversial one: does it mean that the measure is territorially limited? Another source of discomfort turns up when it comes to considering the relationship between art. 20 and the relevant provision in the Hague Convention 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the protection of children. The issue is nevertheless unavoidable, due to the Council Decision of 5 June 2008, authorizing certain Member States to ratify or accede to the Hague Convention (OJ, L, no. 151 of 11 June 2008).

With this scenario, is not surprising that the ECJ rulings on art. 20 are awaited with interest; and that we feel a certain disappointment when reading reasonings like those of *Deticek v Sgueglia*, (2009) ECJ C-403/09 PPU. But on this subject we refer to our larger study, forthcoming in the Spanish journal *La Ley*.