ECLI:EU:C:2021:955

JUDGMENT OF THE COURT (Third Chamber)

25 November 2021 (*)

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Jurisdiction to hear divorce applications – Article 3(1)(a) – ‘Habitual residence’ of an applicant)

In Case C-289/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d’appel de Paris (France), made by decision of 13 February 2020, received at the Court on 30 June 2020, in the proceedings

IB

v

FA,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi (Rapporteur) and N. Wahl, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– IB, by F. Ingold and E. Ravin, avocats,

– FA, by A. Boiché, avocat,

– the French Government, by E. de Moustier, T. Stehelin, D. Dubois and A. Daniel, acting as Agents,

– the German Government, by J. Möller, M. Hellmann and U. Bartl, acting as Agents,

– Ireland, by M. Browne, A. Joyce and J. Quaney, acting as Agents,

– the Portuguese Government, by L. Inez Fernandes, S. Duarte Afonso, P. Barros da Costa and L. Medeiros, acting as Agents,

– the European Commission, initially by M. Heller, W. Wils and M. Wilderspin, and subsequently by M. Heller and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 July 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1)(a) 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).

2 The request has been made in proceedings between the spouses IB and FA concerning an application for the dissolution of their marriage.

Legal context

Regulation (EC) No 1347/2000

3 According to recitals 4, 8 and 12 of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (OJ 2000 L 160, p. 19), which was repealed, with effect from 1 March 2005, by Regulation No 2201/2003:

‘(4) Differences between certain national rules governing jurisdiction and enforcement hamper the free movement of persons and the sound operation of the internal market. There are accordingly grounds for enacting provisions to unify the rules of conflict of jurisdiction in matrimonial matters and in matters of parental responsibility so as to simplify the formalities for rapid and automatic recognition and enforcement of judgments.

…

(8) The measures laid down in this Regulation should be consistent and uniform, to enable people to move as widely as possible. …

…

(12) The grounds of jurisdiction accepted in this Regulation are based on the rule that there must be a real link between the party concerned and the Member State exercising jurisdiction; the decision to include certain grounds corresponds to the fact that they exist in different national legal systems and are accepted by the other Member States.'

Regulation No 2201/2003

4 According to recital 1 of Regulation No 2201/2003:

'The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.'

5 Article 1 of Regulation No 2201/2003, headed 'Scope', provides in paragraph 1 thereof:

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

(a) divorce, legal separation or marriage annulment;

…'

6 Article 3 of that regulation, entitled 'General jurisdiction', provides:

'1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:

(a) in whose territory:

– the spouses are habitually resident, or

– the spouses were last habitually resident, in so far as one of them still resides there, or

– the respondent is habitually resident, or

– in the event of a joint application, either of the spouses is habitually resident, or

– the applicant is habitually resident if he or she has resided there for at least a year immediately before the application was made, or

– the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom [of Great Britain and Northern Ireland] and Ireland, has his or her "domicile" there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.

2. For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.'

7 Under Article 6 of that regulation, entitled ‘Exclusive nature of jurisdiction under Articles 3, 4 and 5’:

‘A spouse who:

(a) is habitually resident in the territory of a Member State, or

(b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her “domicile” in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 3, 4 and 5.’

8 Article 19 of that regulation, entitled ‘Lis pendens and dependent actions’, provides in paragraph 1:

‘Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.’

9 Article 66 of Regulation No 2201/2003, entitled ‘Member States with two or more legal systems’, is worded as follows:

‘With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

(a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;

…’

Regulation (EC) No 4/2009

10 Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1) provides:

‘In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

…

(c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, …

…’

Regulation (EU) 2016/1103

11 Recitals 15 and 49 of Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and

enforcement of decisions in matters of matrimonial property regimes (OJ 2016 L 183, p. 1) are worded as follows:

‘(15) To provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.

…

(49) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation should introduce harmonised conflict-of-law rules to determine the law applicable to all the spouses’ property on the basis of a scale of connecting factors. The first common habitual residence of the spouses shortly after marriage should constitute the first criterion, ahead of the law of the spouses’ common nationality at the time of their marriage. …’

12 Article 5(1) of that regulation provides:

‘Without prejudice to paragraph 2, where a court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to Regulation (EC) No 2201/2003, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application.’

The dispute in the main proceedings and the question referred for a preliminary ruling

13 IB, a French national, and FA, his wife, who is of Irish nationality, were married in Bray (Ireland) in 1994. They had three children, who are now adults.

14 On 28 December 2018, IB filed an application for divorce with the tribunal de grande instance de Paris (Regional Court, Paris, France).

15 By order of 11 July 2019 and in accordance with the form of order sought by FA, the family law division of that court declared that it lacked territorial jurisdiction to rule on the divorce of the spouses. It considered that IB’s decision that his place of employment should be in France was not sufficient, by itself, to demonstrate an intention to establish his habitual residence there, notwithstanding the fiscal and administrative consequences and lifestyle habits resulting from that decision.

16 On 30 July 2019, IB lodged an appeal against that order before the cour d’appel de Paris (Court of Appeal, Paris, France), requesting it, inter alia, to declare that the Tribunal de grande instance de Paris (Regional Court, Paris) had territorial jurisdiction to rule on the divorce of the spouses concerned. In that regard, IB submits that he has worked in France since 2010 and has been doing so on a stable and permanent basis since May 2017. In addition, he submits that he has moved into an apartment belonging to his father in France, that he has a social life in France and that it was his wife’s refusal to come and live in France, despite her regular stays in the country, either in the apartment in Paris or in the holiday home purchased in 2017, that resulted in their leading their daily lives separately.

17 FA contends that it was never envisaged that the family should settle in France. Thus, she submits that the family’s habitual residence is in Ireland and IB has never changed his place of residence, merely the address of his place of work. Moreover, the fact that IB has been working and

receiving his income in France for more than six months is not sufficient to establish his habitual residence there, within the meaning of Article 3(1)(a) of Regulation No 2201/2003. IB continued to travel to the family home in Ireland until the end of 2018, he continued to lead the same life there as before and he consulted a lawyer in Ireland when, in September 2018, the couple began to contemplate divorce.

18 According to the referring court, it is common ground that the family home of the spouses concerned was in Ireland, where the family had settled in 1999, purchasing a property that was to be the marital home. In addition, FA still had her habitual residence in Ireland at the time IB initiated the divorce proceedings, no separation occurred before those proceedings were initiated and there was no evidence that the spouses had a common intention to transfer the marital home to France, numerous circumstances indicating IB's personal and family ties with Ireland, where he returned each weekend in order to join his wife and children.

19 However, that court takes the view that IB's ties with Ireland do not rule out his having ties with France, where, since 2017, he returned every week to work, and finds, like the court of first instance, that for many years IB had in fact two residences, one, a family residence, in Ireland and the other, for professional reasons, in France, with the result that IB's ties to France are, in the view of the referring court, neither occasional nor circumstantial and that, from 15 May 2017 onwards at least, the centre of IB's professional interests has been in France.

20 In that regard, the referring court states, however, that, although it may be considered that IB had established stable and permanent residence in France at least six months before the proceedings were initiated before the Tribunal de grande instance de Paris (Regional Court, Paris), he nevertheless did not give up his residence in Ireland, where he maintained family ties and where he regularly stayed for personal reasons. The referring court infers from this that the Irish courts and the French courts both have jurisdiction to rule on the divorce of the spouses concerned.

21 The referring court states, in that regard, that the principle that the same ground of jurisdiction may arise in two Member States was laid down by the Court in the judgment of 16 July 2009, *Hadadi* (C-168/08, EU:C:2009:474), but points out that the case which gave rise to that judgment concerned the application of the nationality criterion, the definition of which is objective and allows for two spouses being nationals of two Member States, whereas the present case turns on the concept of habitual residence, the very definition of which is subject to interpretation.

22 According to the referring court, the concept of 'habitual residence' for the purposes of Article 3(1)(a) of Regulation No 2201/2003 is an autonomous concept of EU law which requires the Court's interpretation.

23 In those circumstances, the cour d'appel de Paris (Court of Appeal, Paris) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Where it is apparent from the factual circumstances that one of the spouses divides his or her time between two Member States, is it permissible to conclude, in accordance with and for the purposes of the application of Article 3 of Regulation No 2201/2003, that he or she is habitually resident in two Member States, such that, if the conditions listed in that article are met in two Member States, the courts of those two States have equal jurisdiction to rule on the divorce?'

Procedure before the Court

24 In its order for reference, the cour d'appel de Paris (Court of Appeal, Paris) requested that the present reference for a preliminary ruling be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.

25 Acting on the proposal of the Judge-Rapporteur and after hearing the Advocate General, the President of the Court refused that request by decision of 15 July 2020.

26 That decision is based on the finding that, apart from a reference to the fact that the manner in which the spouses concerned organise their lives depends on the determination as regards the jurisdiction of the Irish or French courts – which is, however, insufficient to distinguish the present case from other divorce cases – the referring court has not referred to any circumstance capable of establishing that the nature of the case requires that it be dealt with within a short time, in accordance with Article 105(1) of the Rules of Procedure.

27 By letter of 17 February 2021, IB submitted a reasoned request for a hearing, pursuant to Article 76(1) of the Rules of Procedure.

28 When questioned by the Court Registry on that request in the light of the health crisis, IB, by letter of 2 March 2021, agreed to the replacement of the hearing by the possibility of responding in writing to the written observations of the other parties and interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union.

29 IB, the French Government, Ireland and the European Commission made use of that possibility and submitted observations.

Consideration of the question referred

30 By its question, the referring court asks, in essence, whether Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that a spouse who divides his or her time between two Member States may be habitually resident in both Member States, with the result that the courts of both those States may have jurisdiction to rule on the application for the dissolution of matrimonial ties.

31 According to recital 1 of Regulation No 2201/2003, that regulation is to contribute to the creation of an area of freedom, security and justice, in which the free movement of persons is ensured. Accordingly, with the objective of ensuring legal certainty, Chapters II and III of the regulation lay down rules on jurisdiction and on recognition and enforcement of judgments concerning the dissolution of matrimonial ties (judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 33 and the case-law cited).

32 In that context, Article 3 of that regulation, in Chapter II thereof, lays down the general criteria for jurisdiction with respect to divorce, legal separation and marriage annulment. These criteria, which are objective, alternative and exclusive, meet the need for rules that address the specific requirements of conflicts relating to the dissolution of matrimonial ties (judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 40).

33 In that regard, while the first to fourth indents of Article 3(1)(a) of Regulation No 2201/2003 expressly refer to the habitual residence of the spouses and of the respondent as criteria, the fifth and sixth indents of Article 3(1)(a) permit the application of the jurisdiction rules of the *forum actoris* (judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 41).

34 The latter provisions recognise, under certain conditions, the jurisdiction of the courts of the Member State in whose territory the applicant is habitually resident to rule on the dissolution of matrimonial ties. Thus, the sixth indent of Article 3(1)(a) of Regulation No 2201/2003 confers such jurisdiction where the applicant has resided there for at least six months immediately before the application was made and is a national of the Member State in question or, in the case of Ireland and the United Kingdom, is domiciled there (see, to that effect, judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 42).

35 That provision is designed to protect the interests of spouses and is consonant with the objective pursued by Regulation No 2201/2003, which established flexible conflict of law rules to reflect the mobility of individuals and to protect the rights of a spouse who has left the Member State of common habitual residence, while ensuring there is a genuine link between the party concerned and the Member State exercising jurisdiction (see, to that effect, judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraphs 49 and 50 and the case-law cited).

36 In the present case, as is apparent from the order for reference, IB, who is a French national, brought divorce proceedings before the Tribunal de grande instance de Paris (Regional Court, Paris), relying on the sixth indent of Article 3(1)(a) of Regulation No 2201/2003. According to the referring court, at least six months before those proceedings were initiated, IB had established a stable and permanent residence in France. That court considers that IB's ties to France are neither occasional nor circumstantial and that, at least since May 2017, the centre of his professional interests has been in France. That being said, the referring court also notes that IB did not give up his residence in Ireland, where he maintained family ties and where he stayed for personal reasons as regularly as before. Accordingly, that court considered that IB had in fact two residences, one for the weeks when he was in Paris for professional reasons and the other, with his wife and children in Ireland, for the rest of the time.

37 In those circumstances, it is necessary to determine whether Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that, at a given time, a spouse may have only one habitual residence, for the purposes of that provision.

38 As a preliminary point, it should be noted that Regulation No 2201/2003 does not contain any definition of the concept of a 'habitual residence', in particular of the habitual residence of a spouse, for the purposes of Article 3(1)(a) of that regulation.

39 Given that Regulation No 2201/2003 does not provide any definition of that concept and makes no reference to the law of the Member States for the purpose of determining the meaning and scope of that concept, that concept has to be given an autonomous and uniform interpretation, taking into account the context of the provisions referring to that concept and the objectives of that regulation (see, by analogy, as regards the habitual residence of the child, judgment of 28 June 2018, *HR*, C-512/17, EU:C:2018:513, paragraph 40 and the case-law cited).

40 First, it must be pointed out that neither Article 3(1)(a) of that regulation nor any other provision of that regulation refers to that concept in the plural. Regulation No 2201/2003 refers to the courts of the Member State of 'habitual residence' of one or both of the spouses or of the child, as appropriate, systematically using the singular, and it is not envisaged that the same person may, at the same time, have several habitual residences or be habitually resident in several places. In that regard, the EU legislature also specified, in Article 66(a) of that regulation, that, with regard to a Member State in which two or more systems of law concerning matters governed by that regulation apply in different territorial units, 'any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit'.

41 Secondly, the Court has already held, in interpreting provisions of Regulation No 2201/2003, that the use of the adjective 'habitual' indicates that the residence must have a certain permanence or regularity and that the transfer of a person's habitual residence to a Member State reflects the intention of the person concerned to establish there the permanent or habitual centre of his or her interests, with the intention that it should be of a lasting character (see, to that effect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraphs 44 and 51).

42 That interpretation is, moreover, supported by the Explanatory Report, drawn up by Dr Borrás, on the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters, known as the 'Brussels II' Convention (OJ 1998 C 221, p. 1), which inspired the wording of Regulation No 2201/2003. It is apparent from point 32 of that report (OJ 1998, C 221, p. 27), that, as regards 'habitual residence' as a criterion for attributing jurisdiction to dissolve matrimonial ties, particular account was taken of the definition given by the Court of Justice, in other fields, according to which that concept refers to the place where the person had established, on a fixed basis, his or her permanent or habitual centre of interests.

43 Equating the habitual residence of a person – the spouse in the present case – with his or her permanent or habitual centre of interests does not support the conclusion that several residences may have that character at the same time.

44 That assessment is, thirdly, supported by the objective pursued by the rules on jurisdiction laid down in Article 3(1)(a) of Regulation No 2201/2003, namely to ensure a balance between the free movement of persons within the European Union and legal certainty (see, to that effect, judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 33 and the case-law cited).

45 It is true that, in order to encourage the free movement of persons within the European Union, Regulation No 2201/2003 pursues the objective of facilitating the possibility of obtaining the dissolution of matrimonial ties by establishing, in Article 3(1)(a) thereof, in favour of the applicant, a number of alternative criteria, without establishing any hierarchy between them. That is why the system for sharing jurisdiction established by that regulation concerning the dissolution of matrimonial ties is not intended to preclude several courts having jurisdiction (see, to that effect, judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraphs 46 and 47 and the case-law cited), which are coordinated by means of the *lis pendens* rules set out in Article 19 of that regulation.

46 However, to accept that a spouse may be habitually resident in several Member States at the same time would be liable to undermine legal certainty, by making it more difficult to determine in advance which courts have jurisdiction to rule on the dissolution of matrimonial ties and by making it more difficult for the court seised to determine whether it has jurisdiction. As the Advocate General observed, in essence, in point 94 of his Opinion, there would then be a risk that international jurisdiction would ultimately be determined, not by the criterion of 'habitual residence', for the purposes of Article 3(1)(a) of Regulation No 2201/2003, but by a criterion based on the mere 'de facto' residence of one or other of the spouses, which would infringe that regulation.

47 Fourthly, it must be observed that the interpretation of the rules on jurisdiction set out in Article 3(1)(a) of Regulation No 2201/2003 has consequences which go beyond the dissolution of matrimonial ties as such.

48 In particular, both Article 3(c) of Regulation No 4/2009 and Article 5 of Regulation 2016/1103 refer to the jurisdiction established in Article 3(1)(a) of Regulation No 2201/2003 and provide that, in proceedings for the dissolution of matrimonial ties, the court seised is to have ancillary jurisdiction to rule on certain matters relating to maintenance obligations and the matrimonial property regime. Thus, to accept that a spouse may have several habitual residences would also be liable to undermine the requirement, common to those regulations, that the rules on jurisdiction be predictable (see, as regards Regulation No 4/2009, judgment of 4 June 2020, *FX (Opposing enforcement of a maintenance claim)*, C-41/19, EU:C:2020:425, paragraph 40 and the case-law cited, and, as regards Regulation 2016/1103, inter alia, recitals 15 and 49 thereof).

49 Fifthly, all of those considerations are not called into question by the interpretation of Article 3(1)(b) of Regulation No 2201/2003 adopted in the judgment of 16 July 2009, *Hadadi* (C-168/08, EU:C:2009:474, paragraph 56), in respect of which the Court accepted that the courts of several Member States may have jurisdiction where the persons concerned have several nationalities.

50 As the Advocate General noted, in essence, in point 92 of his Opinion, although the Court held in that judgment that the connecting factor set out in Article 3(1)(b) of Regulation No 2201/2003, namely the nationality of both spouses, was not limited to their ‘effective nationality’, that circumstance is irrelevant to the interpretation of Article 3(1)(a) of that regulation.

51 It follows from all those considerations that, while it cannot be ruled out that a spouse may have several residences at the same time, he or she may have, at a given time, only one habitual residence for the purposes of Article 3(1)(a) of Regulation No 2201/2003.

52 Since the concept of ‘habitual residence’ reflects essentially a question of fact (judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 51), it is for the referring court to verify, on the basis of all the factual circumstances specific to the present case, whether the Member State of the national court seised by IB corresponds to the place where the applicant is habitually resident, within the meaning of the sixth indent of Article 3(1)(a) of Regulation No 2201/2003 (see, by analogy, judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraph 42, and of 28 June 2018, *HR*, C-512/17, EU:C:2018:513, paragraph 41).

53 In that respect, it must be borne in mind that, in interpreting the provisions of Regulation No 2201/2003 relating to parental responsibility, the Court has held that, in order to determine the place of habitual residence of a child, in particular that of an infant who depends on his or her parents on a daily basis, it is necessary to determine the place where the parents are present on a stable basis and are integrated into a social and family environment and the intention thus to settle in that place, where that intention is manifested by tangible steps, may also be taken into account (see, to that effect, judgment of 28 June 2018, *HR*, C-512/17, EU:C:2018:513, paragraphs 45 and 46 and the case-law cited). That case-law thus treats the social and family environment of the parents of the child, in particular at a young age, as an essential criterion for determining the child’s place of habitual residence.

54 It is true that the particular circumstances characterising the place of habitual residence of a child are clearly not identical in every respect to those which make it possible to determine the place of habitual residence of a spouse, for the purposes of Article 3(1)(a) of Regulation No 2201/2003.

55 Thus, a spouse may, as a result of a marital crisis, decide to leave the couple’s former habitual residence in order to settle in another Member State and apply there for the dissolution of

matrimonial ties in accordance with the conditions laid down in the fifth or sixth indents of Article 3(1)(a) of Regulation No 2201/2003, while remaining entirely free to retain some social and family ties in the Member State of the couple's former habitual residence.

56 In addition, unlike a child, particularly an infant, whose environment is, as a general rule, a family environment (see, in that respect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 54), the environment of an adult is necessarily more varied, composed of a significantly wider range of activities and diverse interests, concerning, inter alia, professional, sociocultural and financial matters in addition to private and familial matters. In that regard, it cannot be required that those interests be focused on the territory of a single Member State, in view, inter alia, of the objective pursued by Regulation No 2201/2003, namely to facilitate applications for the dissolution of matrimonial ties by establishing flexible conflict of law rules and by protecting the rights of the spouse who, following a marital crisis, has left the Member State of common habitual residence (see, to that effect, judgment of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 50 and the case-law cited).

57 The fact remains that the case-law cited in paragraph 53 above allows, for the purposes of interpreting Article 3(1) (a) of Regulation No 2201/2003, the view to be taken that the concept of 'habitual residence' is characterised, in principle, by two factors, namely, first, the intention of the person concerned to establish the habitual centre of his or her interests in a particular place and, secondly, a presence which is sufficiently stable in the Member State concerned.

58 Thus, a spouse who seeks to rely on the ground of jurisdiction provided for in the fifth or sixth indents of Article 3(1)(a) of Regulation No 2201/2003 must necessarily have transferred his or her habitual residence to the territory of a Member State other than that of the former common habitual residence and therefore, first, have manifested an intention to establish the habitual centre of his or her interests in that other Member State and, secondly, have demonstrated that his or her presence in the territory of that Member State shows a sufficient degree of stability.

59 In the present case, as is apparent from the documents before the Court, it is common ground that IB, a national of the Member State of the national court seised, satisfied the condition – laid down in the sixth indent of Article 3(1)(a) of Regulation No 2201/2003 – of having resided in that Member State for at least six months immediately before lodging his application for the dissolution of matrimonial ties. It is also established that, since May 2017, IB has been carrying out, on a stable and permanent basis, a professional activity of indefinite duration in France during the week, and that he stays in an apartment there for the purposes of that professional activity.

60 That evidence indicates that IB's stay in the territory of that Member State is stable and also shows, at the very least, IB's integration into a social and cultural environment within that Member State.

61 Although such factors suggest a priori that the conditions laid down in the sixth indent of Article 3(1)(a) of Regulation No 2201/2003 might be satisfied, it is nevertheless for the referring court to ascertain whether it can be concluded, on the basis of all the factual circumstances specific to the case, that the person concerned has transferred his habitual residence to the Member State of that court.

62 In the light of the foregoing considerations, the answer to the question referred is that Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that a spouse who divides his or her time between two Member States may have his or her habitual residence in only one of those Member States, with the result that only the courts of the Member State in which that

habitual residence is situated have jurisdiction to rule on the application for the dissolution of matrimonial ties.

Costs

63 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 (Third Chamber) hereby rules:

Article 3(1)(a) 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 meaning that a spouse who divides his or her time between two Member States may have his or her habitual residence in only one of those Member States, with the result that only the courts of the Member State in which that habitual residence is situated have jurisdiction to rule on the application for the dissolution of matrimonial ties.

[Signatures]

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* Language of the case: French.