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Provisional text

JUDGMENT OF THE COURT (First Chamber)

15 February 2017 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Articles 8 to 15 — Jurisdiction concerning maintenance obligations — Regulation (EC) No 4/2009 — Article 3(d) — Conflicting judgments given in the courts of different Member States — Child habitually resident in the Member State of residence of his mother — The courts of the father’s Member State of residence without jurisdiction to vary a decision that has become final which they adopted earlier concerning the residence of the child, maintenance obligations and contact arrangements)

In Case C-499/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vilniaus miesto apylinkės teismas (District Court, Vilnius, Lithuania), made by decision of 16 September 2015, received at the Court on 22 September 2015, in the proceedings

W,

V

v

X,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, E. Regan, J.-C. Bonichot, A. Arabadjiev and C.G. Fernlund (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 16 November 2016,

after considering the observations submitted on behalf of:

– W and V by P. Markevičius,

– X, by R. de Falco, advokatas,

– the Lithuanian Government, by D. Kriaučiūnas and J. Nasutavičienė, acting as Agents,

– the European Commission, by M. Wilderspin and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 December 2016

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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 This request has been made in proceedings between W and V (‘child V’) and X, concerning parental responsibility and maintenance obligations.

Legal context

Regulation No 2201/2003

- 3 Recital 12 of Regulation No 2201/2003 is worded as follows:

‘The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in

particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.'

4 Article 2 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation:

...

7. the term "parental responsibility" shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

...'

5 Article 8 of the regulation, headed 'General jurisdiction', provides:

'1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.'

6 Article 12(1) and (2) of the regulation, entitled 'Prorogation of jurisdiction', provides:

'1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

...

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

- (c) the proceedings referred to in (a) and (b) have come to an end for another reason.'

7 Article 14 of Regulation No 2201/2003 entitled 'Residual Jurisdiction', is worded as follows:

'Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State.'

Regulation (EC) No 4/2009

8 Under the heading 'General Provisions', 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:

- (a) the court for the place where the defendant is habitually resident, or
- (b) the court for the place where the creditor is habitually resident, or
- (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, or
- (d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility 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.'

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

9 W, a Lithuanian national, and X, a national of the Netherlands and of Argentina, were married on 9 December 2003 in the United States of America. They are the father and mother, respectively, of child V, born on 20 April 2006 in the Netherlands. Child V holds both Lithuanian and Italian nationality. He has never lived in or visited Lithuania.

10 W, X and child V lived in the Netherlands from 2004 to 2006. Following a brief period in Italy, they moved to Canada in 2007. W and X have been separated since December 2010.

11 In July 2011, X moved with child V to Italy before returning with him in November 2011 to the Netherlands, which is their habitual residence.

12 W's habitual residence is Lithuania.

13 X petitioned for divorce before a Canadian court. Several decisions have been made by that court since May 2011, including a decision of 17 April 2012 granting W and X a divorce and awarding X sole custody of child V.

14 However, neither the Lithuanian courts nor the Netherlands courts subsequently seised recognised the decisions of the Canadian court.

The decisions of the Lithuanian courts before the case in the main proceedings

15 On 18 April 2011, W made an application to the Vilniaus miesto 1 apylinkės teismas (First District Court, Vilnius, Lithuania) for a divorce on the basis of X's fault and an order that child V reside with W.

16 On 28 April 2011, the Vilniaus miesto 1 apylinkės teismas (First District Court, Vilnius), on W's application, granted an interim order that child V reside with W for the duration of the proceedings.

17 On the basis of that decision, on 3 July 2012, W applied to the Vilniaus miesto apylinkės teismas (District Court, Vilnius), in child abduction proceedings, for an order that child V be returned to him. That application was dismissed.

18 The interim order of 28 April 2011 was subsequently set aside by an immediately enforceable decision of the Vilniaus miesto apylinkės teismas (District Court, Vilnius). That decision was upheld on appeal. W appealed on a point of law but his appeal was held inadmissible.

19 By decision of 8 October 2013, the Vilniaus miesto apylinkės teismas (District Court, Vilnius) pronounced the divorce of W and X. It also determined that child V should reside with X and determined the child contact arrangements for W and the amount of child maintenance that W should pay for child V.

20 That decision was upheld by a decision of 30 May 2014 of the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania). By order of 8 September 2014, the Lietuvos Aukščiausiasis Teismas (Supreme Court, Lithuania) declared W's appeal on a point of law inadmissible.

The decisions of the Netherlands courts predating the case in the main proceedings

21 By decision of 29 January 2014, the rechtbank Overijssel (Court in Overijssel, Netherlands) ordered W to pay maintenance to X at EUR 4 323 per month payable from 18 May 2012 and for the benefit of child V at EUR 567 per month from 27 June to 1 November 2011, then EUR 790 per month from 2 November 2011, those

amounts being reviewed on an annual basis, the first review being on the 1 January 2013.

22 By decision of 22 August 2014, that court granted X sole custody of child V.

23 That court noted that, under Netherlands law, sole custody of a child may be granted to one parent either when there is an unacceptable risk that the child may suffer as a result of its parents' disagreements and there is no prospect of any adequate improvement in the near future or where a change in the custody arrangements is otherwise necessary in the interests of the child.

Recognition and enforcement of the decisions made

24 By decision of 31 October 2014, the rechtbank Overijssel (Court in Overijssel) refused to recognise and allow the enforcement in the Netherlands of the decision of 8 October 2013 of the Vilniaus miesto apylinkės teismas (District Court, Vilnius) in so far as it granted the divorce of W and X on the basis of joint fault, ordered that child V should reside with his mother, ordered W to pay maintenance for child V and the costs of the proceedings. The court recognised and allowed the enforcement in the Netherlands of those parts of the judgment that concerned the contact arrangements.

25 By decision of 2 February 2015, the Lietuvos apeliacinis teismas (Court of Appeal, Lithuania), seised by W, refused to declare the decision of 29 January 2014 of the rechtbank Overijssel (Court in Overijssel) determining W's maintenance obligations towards X and child V enforceable, refused to recognise and declare enforceable that court's decision of 22 August 2014 granting sole custody of child V to X and dismissed the proceedings concerning the non-recognition in Lithuania of the judgment of the Netherlands court of 31 October 2014.

Proceedings before the referring court and the question referred for a preliminary ruling

26 On 28 August 2014, W brought proceedings before the Vilniaus miesto apylinkės teismas (District Court, Vilnius) seeking to have the place of residence of child V changed, the amount of maintenance varied and the contact arrangements altered, as ordered in the decision of 8 October 2013.

27 By decision of 25 September 2014, that court declared those applications inadmissible on the grounds that W had not demonstrated a change of circumstances since the adoption of the decision of 8 October 2013.

28 In its ruling of 16 December 2014, the Vilniaus apygardos teismas (Regional Court, Vilnius), hearing an appeal by W against the judgment of the Vilniaus miesto apylinkės teismas (District Court, Vilnius) of 25 September 2014, overturned that judgment in part and referred the case back to the lower court for reconsideration.

- 29 By decision of 23 December 2014, that court declared that it lacked jurisdiction to hear and determine W's applications on the grounds that the rules on jurisdiction in Regulation No 2201/2003 had to prevail over the provisions in the Lithuanian Code of Civil Procedure. According to that court, except in certain cases of a change in the child's residence or as a result of an agreement between the holders of parental responsibility, it is for the courts of the Member State where the child is habitually resident, that is to say, in the present case, the Kingdom of the Netherlands, to hear and determine those applications. The court informed the applicant that he could bring the matter before a court with jurisdiction in the Netherlands.
- 30 On 31 March 2015, the Vilniaus apygardos teismas (Regional Court, Vilnius) hearing W's appeal against the judgment of the Vilniaus miesto apylinkės teismas (District Court, Vilnius) of 23 December 2014, set aside that judgment and referred the case back to the latter court so that that court could reconsider the admissibility of W's applications. It held that that court had wrongly held that it had no jurisdiction to hear those applications, when they sought the amendment of the decision of the Vilniaus miesto apylinkės teismas (District Court, Vilnius) of 8 October 2013, which has become final, concerning, inter alia, child V's residence, the contact arrangements and the maintenance obligations. Such an amendment may be brought about only by way of a new judicial decision that has become final. However, in the present case, in so far as the Netherlands courts refuse to recognise the judgment of 8 October 2013, it is impossible for W to bring his application for amendment of the rights and obligations in that judgment before those courts.
- 31 In those circumstances, the Vilniaus miesto apylinkės teismas (District Court, Vilnius) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- 'In accordance with Articles 8 to 14 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, which Member State (the Republic of Lithuania or the Kingdom of the Netherlands) has jurisdiction to hear and determine an application for the changes to the place of residence, to the child maintenance amount and to the applicable contact arrangements in respect of the minor child, V, who is habitually resident in the Kingdom of the Netherlands?'

The application for the oral procedure to be reopened

- 32 By document lodged on 20 December 2016, W applied, on the basis of Article 83 of the Rules of Procedure of the Court of Justice, for the oral procedure to be reopened and a question to be referred by the Court of Justice to the European Court of Human Rights for a preliminary ruling.
- 33 Concerning, in the first place, the application for a reference to the European Court of Human Rights, it should be pointed out that the Court has no power under Article

83 of the Rules of Procedure or under any other provision in those rules to make such a reference.

- 34 Concerning, in the second place, the application for the oral procedure to be reopened, W submits a fact which he considers to be new and which was not argued before the Court, namely, that by judgment of 20 May 2016, the rechtbank Overijssel (Court in Overijssel,) held that the Netherlands courts could not rule on the amendment of the judgment of the Vilniaus miesto apylinkės teismas (District Court, Vilnius) of 8 October 2013 and decided not to recognise or allow the enforcement of those parts of the judgment concerning contact arrangements. W also maintains that the description of the facts in the Advocate General's Opinion is not accurate.
- 35 According to settled case-law, the Court may of its own motion, or on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure in accordance with Article 83 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (judgment of 15 September 2011, *Accor*, C-310/09, EU:C:2011:581, paragraph 19 and the case-law cited). On the other hand, neither the Statute of the Court of Justice of the European Union nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion (judgment of 16 December 2010, *Stichting Natuur en Milieu and Others*, C-266/09, EU:C:2010:779, paragraph 28 and the case-law cited).
- 36 As regards whether the fact relied on by W is new, it is sufficient to note that the decision of 20 May 2016 of the rechtbank Overijssel (Court in Overijssel) does not constitute a new fact since, like the decision of 31 October 2014 of the same court, that decision refuses, in essence, to recognise the decision of 8 October 2013.
- 37 As regards W's observations concerning the reasoning in the Advocate General's Opinion in the present case, it should be noted that they seek to criticise that Opinion. It follows from the case-law referred to in paragraph 35 above that the submission of such observations is not provided for in the provisions governing procedure before the Court.
- 38 In those circumstances, the Court, having heard the Advocate General, takes the view that in the present case it has all the material necessary to answer the questions referred by the national court and that all the arguments necessary for the determination of the case at issue have been debated between the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 39 Consequently, the request for the oral procedure to be reopened must be rejected.

Consideration of the question referred

- 40 As a preliminary point, it is necessary, first, to reject the arguments of W and the European Commission seeking to call into question the Court's jurisdiction. W and the Commission argue in their written observations that the referring court requests the Court to designate the Member State whose courts have jurisdiction to rule on the dispute in the main proceedings. However, the referring court is responsible for that task inasmuch as the Court has jurisdiction only to interpret the provisions of EU law and not to rule on the substance of the questions before the national courts.
- 41 In that regard, in proceedings of the kind referred to in Article 267 TFEU, the Court of Justice is indeed empowered to rule only on the interpretation or validity of EU law provisions (judgment of 10 November 2011, *X and X BV*, C-319/10 and C-320/10, not published, EU:C:2011:720, paragraph 29). It is for the referring court to give a ruling in the dispute before it, taking into account the Court's reply (judgment of 4 February 2010, *Genc*, C-14/09, EU:C:2010:57, paragraph 31).
- 42 However, in the present case, it is clear from the order for reference that the national court seeks guidance on how Regulation No 2201/2003 should be interpreted in order to determine the court with jurisdiction.
- 43 Consequently, the mere reference to the Member States whose courts may have jurisdiction, in brackets only, in the wording of the question referred for preliminary ruling, cannot deprive the Court of jurisdiction to rule on the question referred.
- 44 In the second place, it should be observed that the national court asks its question concerning Regulation No 2201/2003 alone, whereas it is apparent from that question and from the decision to refer that the case in the main proceedings concerns not only parental responsibility but also maintenance obligations, which are not covered by that regulation.
- 45 In that regard, the fact that a national court has, formally speaking, worded its request for a preliminary ruling with reference to certain provisions of EU law does not preclude the Court of Justice from providing the national court with all the elements of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions (see, inter alia, judgment of 29 September 2016, *Essent Belgium*, C-492/14, EU:C:2016:732, paragraph 43).
- 46 Therefore, the question referred should be reformulated by including the relevant provisions of Regulation No 4/2009.
- 47 Consequently, it must be held that, by its question, the referring court asks, in essence, whether Article 8 of Regulation No 2201/2003 and Article 3 of Regulation No 4/2009 must be interpreted as meaning that the courts of the Member State which have adopted a decision that has become final concerning parental responsibility and maintenance obligations in respect of a minor child retain jurisdiction to rule on

an application for amendment of the orders made in that decision, even though the child is habitually resident in the territory of another Member State.

- 48 In order to answer that question, it should be stated from the outset that, pursuant to Article 3(d) of Regulation No 4/2009, in matters relating to maintenance obligations in Member States, jurisdiction is to lie with the courts that have jurisdiction, under Regulation No 2201/2003, to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings.
- 49 Next, the mechanism established by Regulation No 2201/2003 and the objectives which it pursues should be borne in mind.
- 50 Regulation No 2201/2003 is based on judicial cooperation and mutual trust (judgment of 9 November 2010, *Purrucker*, C-296/10, EU:C:2010:665, paragraph 81), which lead to mutual recognition of judicial decisions, the cornerstone for the creation of a genuine judicial area (judgment of 15 July 2010, *Purrucker*, C-256/09, EU:C:2010:437, paragraph 70).
- 51 As is apparent from recital 12 of Regulation No 2201/2003, that regulation was drawn up with the objective of meeting the best interests of the child and, to that end, it favours the criterion of proximity. The EU legislature, in effect, considered that the court geographically close to the child's habitual residence is the court best placed to assess the measures to be taken in the interests of the child (judgment of 15 July 2010, *Purrucker*, C-256/09, EU:C:2010:437, paragraph 91). According to that recital, jurisdiction should lie in the first place with the Member State of the child's habitual residence, except in certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.
- 52 Article 8 of Regulation No 2201/2003 gives expression to that objective by establishing a general jurisdiction in favour of the courts of the Member State in which the child is habitually resident.
- 53 According to Article 8(1), the jurisdiction of a court must be established 'at the time the court is seised', that is to say, at the time when the document instituting the proceedings is lodged with the court, in accordance with Article 16 of that regulation (see, to that effect, judgment of 1 October 2014, *E.*, C-436/13, EU:C:2014:2246, paragraph 38).
- 54 Furthermore, as the Advocate General noted at point 45 of his Opinion, referring to paragraph 40 of the judgment of 1 October 2014, *E.* (C-436/13, EU:C:2014:2246), that jurisdiction must be determined and established in each specific case, where a court is seised of proceedings, which implies that it does not continue after proceedings have been brought to a close.

- 55 By way of derogation from Article 8 of Regulation No 2201/2003, Article 9 of that regulation provides, where a child moves and subject to certain conditions, for the courts of the Member State of the child's former habitual residence to retain jurisdiction, while Article 12(1) of that regulation provides, subject to certain conditions and where the holders of parental responsibility are in agreement, for the prorogation of the jurisdiction of the court which has jurisdiction to decide on an application for divorce, legal separation or marriage annulment, which is not the court of the Member State where the child is habitually resident.
- 56 Furthermore, Regulation No 2201/2003 lays down specific rules applicable in cases of child abduction or wrongful retention of a child (Articles 10 and 11), where the habitual residence of the child, present in a Member State, cannot be established and where jurisdiction cannot be determined on the basis of Article 12 of that regulation (Article 13), where no court of a Member State has jurisdiction pursuant to Articles 8 to 13 (Article 14) and, by way of exception and in certain circumstances, where the court having jurisdiction transfers the case to the court of another Member State which it considers better placed to hear the case (Article 15).
- 57 The question referred should be examined in the light of those considerations.
- 58 According to the order for reference, the application brought by W seeks the amendment of the provisions of the final decision of 8 October 2013 of the Vilniaus miesto apylinkės teismas (District Court, Vilnius) concerning parental responsibility and maintenance obligations in respect of child V. The referring court states, in that regard, that that decision was confirmed by a decision of the Vilniaus apygardos teismas (Regional Court, Vilnius) of 30 May 2014 and that the appeal lodged against that decision by W was dismissed by decision of 8 September 2014 of the Lietuvos Aukščiausiasis Teismas (Supreme Court, Lithuania).
- 59 In those circumstances, the lodging, on 28 August 2013, of the application for amendment of the decision of 8 October 2013 must be considered to be the starting point of new proceedings. It follows that the court seised, in this case the Vilniaus miesto apylinkės teismas (District Court, Vilnius), must determine the court with jurisdiction, taking into account, in the first place, the habitual residence of child V at the time that court was seised, in accordance with Article 8(1) of Regulation No 2201/2003.
- 60 In its judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraph 46), confirmed by settled case-law, (see, inter alia, judgment of 9 October 2014, *C*, C-376/14 PPU, EU:C:2014:2268, paragraph 50), the Court held that the meaning and scope of the concept of 'habitual residence' must be determined in the light of the best interests of the child and, in particular, of the criterion of proximity. That concept corresponds to the place that reflects some degree of integration of the child in a social and family environment. That place must be established by the national court, taking account of the circumstances of fact specific to each individual case. The conditions and reasons for the child's stay

on the territory of a Member State and the child's nationality are of particular relevance. In addition to the physical presence of the child in a Member State, which must be taken into consideration, other factors must also make it clear that that presence is not in any way temporary or intermittent (see, to that effect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraphs 47 to 49).

61 Thus, the determination of a child's habitual residence in a given Member State requires at least that the child has been physically present in that Member State.

62 However, in the case in the main proceedings, it is common ground that child V has never been to Lithuania.

63 In those circumstances, the mere fact that one of the nationalities of child V is the nationality of that Member State cannot suffice for the purpose of considering that child to be habitually resident there, within the meaning of Regulation No 2201/2003.

64 On the other hand, the physical presence of child V in another Member State, in this case the Kingdom of the Netherlands, with one of his parents for several years, in accordance with a decision which has become final, in this case the decision of the Vilniaus miesto apylinkės teismas (District Court, Vilnius) of 8 October 2013, is capable of establishing that child V is habitually resident there and of conferring jurisdiction on the courts of that Member State to hear and determine the applications for parental responsibility and maintenance. The position could be different only if there were facts prompting a departure from the rule that jurisdiction usually lies with the place of habitual residence.

65 However, no such facts are apparent from the documents in the case file before the Court. In particular, it does not appear either that Child V had moved from Lithuania to the Netherlands before the Vilniaus miesto apylinkės teismas (District Court, Vilnius) was seised or that there was an agreement between the holders of parental responsibility as to the jurisdiction of the Lithuanian courts. Moreover, the referring court makes no mention of an abduction or wrongful retention of child V, nor does it appear that the Lithuanian courts were designated by the Netherlands courts as being best placed to hear the case in the main proceedings.

66 Thus, in a case such as that in the main proceedings, it is the courts of the Member State of the child's habitual residence that have jurisdiction in matters of parental responsibility. In the present case, the courts thus designated by the referring court are the Netherlands courts.

67 It is, consequently, for those courts to decide on applications, such as those of W, seeking to change the child's place of residence, vary the amount of maintenance and change the contact arrangements for the parent concerned.

- 68 It should be pointed out, as the Advocate General noted in points 43 to 49 of his Opinion, that the courts which made a decision in the divorce proceedings, in the present case the Lithuanian courts, do not in a case such as that in the main proceedings enjoy any prorogation of jurisdiction. Even if the jurisdiction of those courts has been accepted expressly or otherwise in an unequivocal manner by X, in accordance with Article 12(1)(b) of Regulation No 2201/2003, that jurisdiction has in any event come to an end, since the decision granting the application for divorce and deciding on parental responsibility has become final, in accordance with Article 12(2)(a) and (b) of that regulation.
- 69 The fact that the final decision on which the parent concerned relies in order to make his application for variation has not been recognised, in whole or in part, by the courts of the Member State of the child's habitual residence does not prevent, whether or not that lack of recognition is justified, those courts from having jurisdiction to decide on that application, since that application gives rise to new proceedings.
- 70 It follows from all of the foregoing considerations that the answer to the question referred is that Article 8 of Regulation No 2201/2003 and Article 3 of Regulation No 4/2009 must be interpreted as meaning that, in a case such as that in the main proceedings, the courts of the Member State which made a decision that has become final concerning parental responsibility and maintenance obligations with regard to a minor child no longer have jurisdiction to decide on an application for variation of the provisions ordered in that decision, inasmuch as the habitual residence of the child is in another Member State. It is the courts of the Member State of habitual residence that have jurisdiction to decide on that application.

Costs

- 71 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 (First Chamber) hereby rules:

Article 8 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, and 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, must be interpreted as meaning that, in a case such as that in the main proceedings, the courts of the Member State which made a decision that has become final concerning parental responsibility and maintenance

obligations with regard to a minor child no longer have jurisdiction to decide on an application for variation of the provisions ordered in that decision, inasmuch as the habitual residence of the child is in another Member State. It is the courts of the Member State of habitual residence that have jurisdiction to decide on that application.

[Signatures]

* Language of the case: Lithuanian.

