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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

28 June 2018 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 8(1) — Place of habitual residence of the child — Infant — Decisive circumstances for establishing that place of habitual residence)

In Case C-512/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (District Court, Poznań-Old Town, Poznań, Poland), made by decision of 16 August 2017, received at the Court on 22 August 2017, in the proceedings brought by

HR

with the participation of:

KO,

Prokuratura Rejonowa Poznań Stare Miasto w Poznaniu,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça (Rapporteur), President of the Chamber, E. Levits, A. Borg Barthet, M. Berger and F. Biltgen, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- HR, by A. Kastelik-Smaza, adwokat,
- KO, by K. Obrębska-Czyż, adwokat,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Czech Government, by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,
- the European Commission, by M. Wilderspin and D. Milanowska, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(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 (OJ 2003 L 338, p. 1).

2 The request has been made in proceedings brought by HR concerning a request to establish detailed rules regarding the exercise of parental responsibility over her daughter, who is a minor.

Legal context

Regulation No 2201/2003

3 Recital 12 of Regulation No 2201/2003 states:

‘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 For the purposes of that regulation, Article 2(9) thereof defines ‘rights of custody’ as ‘rights and duties relating to the care of the person of a child, and in particular the right to determine the child’s place of residence’.

5 Section 2, entitled ‘Parental responsibility’, of Chapter II, entitled ‘Jurisdiction’, of that regulation contains Articles 8 to 15 of that regulation.

6 Article 8 of Regulation No 2201/2003, entitled ‘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.’

7 Article 12 of that regulation, entitled ‘Prorogation of jurisdiction’, provides in paragraph 3 thereof:

‘The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.’

8 Under Article 15 of Regulation No 2201/2003, entitled ‘Transfer to a court better placed to hear the case’:

‘1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

...

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

...

(c) is the place of the child’s nationality ...

...’

Polish law

9 According to Articles 579, 582 and 582¹ of the ustawa [z dnia 17 listopada 1964 r.] — [Przepisy wprowadzające] Kodeks postępowania cywilnego (Law of 17 November 1964 on the Code of Civil Procedure) (Dziennik Ustaw 2016, item 1822), in the version applicable to the dispute in the main proceedings (‘the Law on the Code of Civil Procedure’), cases concerning the conferment of parental responsibility, the resolution of important matters concerning the child, and contact with the child are to be examined in non-contentious proceedings.

10 Under Article 1099 § 1 of the Law on the Code of Civil Procedure, the court seised is required to consider, of its own motion and at all stages of the proceedings, whether the Polish courts have jurisdiction. Should it find that those courts do not have jurisdiction, it is required to declare the application or request inadmissible.

11 According to Article 386 § 6 of the Law on the Code of Civil Procedure, the legal rulings and recommendations concerning further proceedings set out in the grounds of the judgment of the court of second instance are binding on both the court to which the case has been remitted and the court of second instance when the case is reconsidered. Pursuant to Article 13 § 2 of the Law on the Code of Civil Procedure, that provision also applies, by analogy, to cases examined in non-contentious proceedings.

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

12 HR is a Polish national who has been living in Brussels (Belgium) since 2005, where she works as an established official in the European External Action Service (EEAS) on the basis of an employment contract of indefinite duration. KO is a Belgian national who also lives in Brussels.

13 HR and KO met in 2013. In June 2014 they moved in together in Brussels. The result of this relationship was a daughter, MO, with dual Polish and Belgian nationality, who was born in that city on 16 April 2015. It is apparent from the order for reference that HR and KO are both holders of parental responsibility over MO.

14 Following the birth of MO, HR, with KO's consent, stayed in Poland with the child on several occasions during her parental leave and subsequently during holidays and festivals, sometimes for periods lasting up to three months. During those visits, HR stayed with the child at her parents' house in Przesieka (Poland) or in an apartment situated in Poznań (Poland), which she has owned since 2013.

15 HR and KO separated in August 2016 and, since then, have lived separately in Brussels. MO lives with HR and, as agreed with the latter, KO sees his daughter once a week, on Saturdays, from 10.00 to 16.00. He has arranged a room in his apartment for her. In addition, the parents had recourse to mediation with the aim of settling the question of parental responsibility over MO. However, that mediation broke down in November 2016.

16 MO does not attend crèche or nursery school. HR's mother assists her in caring for the child on a day-to-day basis. Previously, that assistance was provided by a Polish child minder. HR and MO are officially registered as resident in both Belgium and Poland. HR and her family communicate with the child in Polish, while KO speaks to her in French. Their daughter mainly speaks and understands the first of those two languages.

17 HR wishes to settle in Poland with MO, a move opposed by KO. In that context, on 10 October 2016 HR applied to the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (District Court, Poznań-Old Town, Poznań, Poland), asking it to establish the place of residence of MO as her own place of residence, wherever that might be, and to put in place visiting rights for KO.

18 By order of 2 November 2016, the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (District Court, Poznań-Old Town, Poznań) dismissed that application, on the ground that the Polish courts lacked international jurisdiction to hear the case. According to that court, since HR lives and works in Brussels and MO lives with her, the child's place of habitual residence is in Belgium. Consequently, in accordance with Article 8(1) of Regulation No 2201/2003, the Belgian courts have

jurisdiction to give a ruling on parental responsibility over MO. That finding is not altered by the fact that HR frequently visits her family in Poland with the child and owns property in that Member State.

19 On 17 November 2016 HR brought an appeal against that order before the Sąd Okręgowy w Poznaniu (Regional Court, Poznań, Poland). In addition, in February 2017, KO submitted an application to a court in Brussels concerning parental responsibility over MO. However, that court stayed the proceedings pending the outcome of the proceedings initiated before the Polish courts.

20 By order of 28 March 2017, the Sąd Okręgowy w Poznaniu (Regional Court, Poznań) set aside the order of the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (District Court, Poznań-Old Town, Poznań), finding that the Polish courts had jurisdiction, on the basis of Article 8(1) of Regulation No 2201/2003, to examine the application in the main proceedings.

21 In that regard, the court of second instance considered that, at the time the application was submitted, MO's place of habitual residence was in Poland. Against that background, that court recalled that, according to the case-law of the Court, in particular the judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829), the place of habitual residence is the place where the child demonstrates some degree of integration into the social and family environment. According to the court of second instance, MO, who was 18 months old when the application was submitted in the main proceedings, was not integrated into the Belgian social environment, in so far as she did not attend crèche or nursery school and did not have a child minder of that nationality, and in so far as the only person she visited in connection with that environment was her father. Since September 2016, MO's family environment has been limited to her mother, who has custody of her on a day-to-day basis. MO is connected to Polish tradition and culture via her mother and her mother's family, given that she has had a Polish child minder and primarily expresses herself in Polish, has spent holidays, festivals and the majority of HR's parental leave in Poland, and was christened in that Member State.

22 In addition, according to that same court, the fact that HR and KO have not married and have not bought property in Brussels shows that HR does not plan to stay in Belgium longer than is required by the nature of her work. Conversely, the purchase by HR of property in Poznań, together with her frequent and prolonged stays in Poland, show that she has the intention of returning to live in that Member State.

23 In April 2017 the Belgian public prosecution authorities prohibited HR from leaving the territory of Belgium with MO for an indefinite period. However, HR obtained permission to stay in Poland with the child from 11 July 2017 to 12 August 2017.

24 Following the setting aside of its initial order, the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (District Court, Poznań-Old Town, Poznań) is once again hearing the case in the main proceedings. On 19 June 2017 HR also submitted a further application to that court, requesting that it give its consent to MO travelling to Poland.

25 That court considers that, taking into account the case-law of the Court, in particular the judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829), there are two possible interpretations of the concept of the child's place of 'habitual residence' for the purpose of Article 8(1) of Regulation No 2201/2003 in a case such as the one before it.

26 First, it might be possible to determine the place of habitual residence of an infant such as MO by taking into account only integrating ties stemming from the parent who has actual custody

of that infant on a daily basis. From this perspective, the ties which the child maintains with the Member State of which that parent is a national, demonstrated by the fact that the child stays there during holidays and that parent's leave periods, that the child's grandparents and extended family on that parent's side are resident in that State, that the child was christened there, and that it expresses itself primarily in the language of that State, are decisive.

27 However, other circumstances might be taken into consideration to the same extent, in particular the fact that: the child in question stays in a given Member State on a daily basis; the parent who has custody of that child in practice is employed in that Member State; the child receives medical assistance there; and the other parent, with whom the child has regular contact, is a national of that Member State and has his or her place of habitual residence there.

28 In those circumstances, the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (District Court, Poznań-Old Town, Poznań) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In the circumstances of the present case, should Article 8(1) of [Regulation No 2201/2003] be interpreted as meaning that:

— the place of habitual residence of a child aged 18 months is the Member State in which the child demonstrates some degree of integration into the social and family environment through the nationality of the parent who has custody of the child on a daily basis, the use by the child of the official language of that Member State, the christening of the child in that country, visits, lasting up to three months, to that country by the child during holidays and that parent's parental leave, and contact with that parent's family,

— in a situation where the child resides with that same parent in another Member State for all remaining periods and that parent is employed in that State on the basis of an employment contract of indefinite duration and the child maintains in that State regular but temporally limited contact with its second parent and his family?

(2) When determining, on the basis of Article 8(1) of Regulation No 2201/2003, by assessing the integration of the child into the social and family environment, the place of habitual residence of a child aged 18 months which, given its age, remains in the custody of only one of its parents on a daily basis and maintains regular but temporally limited contact with the second parent, where there is a lack of agreement between the parents as to the exercise of parental responsibility for and contact with the child, should equal account be taken of the ties between the child and each of its parents, or should greater consideration be given to the child's ties with the parent who looks after the child on a daily basis?'

Procedure before the Court

29 The referring court requested that the present case be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court. On 6 September 2017, after hearing the Advocate General, the Fifth Chamber decided not to grant that request.

30 Nevertheless, on 15 November 2017 the President of the Court decided that that case would be given priority, pursuant to Article 53(3) of those Rules of Procedure.

Consideration of the questions referred

Admissibility

31 In the first place, in order to contest the admissibility of the request for a preliminary ruling, HR calls in question the way in which the facts set out in the order for reference have been presented, which she considers to be both incomplete and misleading. In her view, by the very wording of the questions referred, the referring court downplays the existing ties between MO and Poland.

32 In that regard, it is sufficient to point out that, in the context of the procedure provided for in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the latter is empowered only to give rulings on the interpretation or the validity of an EU law provision on the basis of the facts which the referring court puts before it. It is for the referring court both to establish and to assess the facts of the case (see, to that effect, judgments of 3 September 2015, *Costea*, C-110/14, EU:C:2015:538, paragraph 13 and the case-law cited, and of 21 July 2016, *Argos Supply Trading*, C-4/15, EU:C:2016:580, paragraph 29 and the case-law cited).

33 Therefore, it is not for the Court to give a decision on potential disagreements concerning the facts of the present case. Instead, it falls to the Court to interpret Regulation No 2201/2003 in the light of the premisses put forward by the referring court.

34 In the second place, HR disputes the necessity of the present questions referred. In that regard, she doubts that an answer from the Court regarding the international jurisdiction of the Polish courts will still be useful in view of the time that has elapsed since the application concerning parental responsibility over MO was submitted. She argues that, at this stage, it would be better, in the interests of the child, to give a ruling on the substance. Moreover, she submits that the referring court does not in fact have any doubts as to the interpretation of EU law and merely seeks confirmation from the Court of an assessment of the facts that goes against that carried out by the Sąd Okręgowy w Poznaniu (Regional Court, Poznań), when such an assessment falls outside the Court's jurisdiction.

35 In that regard, it should be borne in mind that, in the context of cooperation between the Court and the national courts, established by Article 267 TFEU, it is for the national courts alone to assess, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court (judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 19 and the case-law cited).

36 It follows that, in the present case, the referring court alone has jurisdiction to decide whether, notwithstanding the order made by the Sąd Okręgowy w Poznaniu (Regional Court, Poznań), it has doubts regarding the interpretation of the rules on international jurisdiction laid down by Regulation No 2201/2003 giving rise to a need for the present request for a preliminary ruling.

37 In those circumstances, the request for a preliminary ruling is admissible.

Substance

38 By its two questions, which must be examined together, the referring court asks, in essence, how to interpret the concept of the child's place of 'habitual residence' for the purpose of Article 8(1) of Regulation No 2201/2003 and, in particular, which elements are to be used to determine the place of habitual residence of an infant, in circumstances such as those at issue in the present case.

39 In that regard, it should be borne in mind that, pursuant to that provision, the courts of a Member State are to 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.

40 Given that that regulation does not provide any definition of the concept of the child's place of 'habitual residence' and makes no reference to the law of the Member States in that regard, the Court has repeatedly held that the concept is an autonomous one of EU law, which has to be interpreted in the light of the context of the provisions referring to that concept and the objectives of Regulation No 2201/2003, in particular that which is apparent from recital 12 thereof, according to which the grounds of jurisdiction which it establishes are shaped in the light of the best interests of the child, in particular on the criterion of proximity (judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraphs 31, 34 and 35; of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraphs 44 to 46; of 9 October 2014, *C*, C-376/14 PPU, EU:C:2014:2268, paragraph 50; and of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 40).

41 According to case-law, the child's place of habitual residence must be established on the basis of all the circumstances specific to each individual case. In addition to the physical presence of the child in the territory of a Member State, other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that it reflects some degree of integration of the child into a social and family environment (see, to that effect, judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraphs 37 and 38; of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraphs 44 and 47 to 49; and of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraphs 42 and 43).

42 It is apparent from that case-law that the child's place of habitual residence for the purpose of Regulation No 2201/2003 is the place which, in practice, is the centre of that child's life. Pursuant to Article 8(1) of that regulation, it is for the court seised to determine where that centre was located at the time the application concerning parental responsibility over the child was submitted.

43 In that context, it is necessary, in general, to take into consideration factors such as the duration, regularity, conditions and reasons for the child's stay in the territory of the different Member States concerned, the place and conditions of the child's attendance at school, and the family and social relationships of the child in those Member States (see, to that effect, judgment of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraph 39).

44 Furthermore, where the child is not of school age, a fortiori where the child is an infant, the circumstances of the reference person(s) with whom that child lives, by whom the child is in fact looked after and taken care of on a daily basis — as a general rule, its parents, — are particularly important for determining the place which is the centre of that child's life. The Court has observed that the environment of such a child is essentially a family environment, determined by that person or those persons, and that that child necessarily shares the social and family environment of the circle of people on whom he or she is dependent (see, to that effect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraphs 53 to 55).

45 Accordingly, in a situation where such an infant lives with its parents on a daily basis, it is necessary, in particular, to determine the place where the parents are permanently present and are integrated into a social and family environment. In that regard, it is necessary to take into consideration factors such as the duration, regularity, conditions and reasons for their stay in the territory of the different Member States concerned, and the family and social relationships maintained by them and by the child in those Member States (see, to that effect, judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraphs 55 and 56).

46 Lastly, the intention of the parents to settle with the child in a given Member State, where that intention is manifested by tangible steps, may also be taken into account in order to determine the child's place of habitual residence (see, to that effect, judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraph 40; of 9 October 2014, *C*, C-376/14 PPU, EU:C:2014:2268, paragraph 52; and of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 46).

47 Having recalled those general considerations, it is apparent from the order for reference that, in the present case, the child MO was born and has lived with both of her parents in Brussels and that, at the time the request to establish detailed rules regarding parental responsibility was made, following her parents' separation, she was still living in Brussels in HR's apartment, as HR had actual custody of the child. It is also apparent from that order for reference that HR, who has lived in that city for several years, is employed there under an employment contract of indefinite duration. Those circumstances thus indicate that, at the time the referring court was seised, HR and her dependent child were permanently present in Belgium. In addition, in view of the duration, regularity, conditions and reasons for that stay, such a stay, in principle, reflects some degree of integration of the parent in question into a social environment shared by the child.

48 Furthermore, while it is true that, when its parents have separate residences, the family environment of an infant is determined, to a large extent, by the parent with whom it lives on a daily basis, the other parent is also a part of that environment, provided that the child still has regular contact with that parent. Thus, in so far as such a relationship exists, it must be taken into account in order to determine the place which is the centre of the child's life.

49 The weight that should be given to that relationship depends on the particular circumstances of each individual case. For the purposes of a case such as that in the main proceedings, it is sufficient to note that the fact that the child initially also lived with that other parent in the city where that child is usually resident, together with the fact that that parent is still resident in that city and has weekly contact with the child, show that the child is integrated, in that city, into a family environment comprising both of its parents.

50 It is true that it is also apparent from the order for reference that the child MO has stayed on several occasions, sometimes for up to three months, in Poland, HR's Member State of origin and the Member State where her family is resident.

51 In that regard, it has nonetheless been established that the reasons for those stays by MO in Poland were her mother's leave periods and holidays. It should be specified that stays spent by a child with its parents in the past in the territory of a Member State in the context of holidays are, in principle, intermittent and temporary interruptions to their everyday lives. Therefore, such stays cannot, as a general rule, constitute decisive circumstances in the context of assessing the child's place of habitual residence. The fact that, in the present case, those stays sometimes lasted for several weeks, or even for some months, does not, in itself, call in question the relevance of those findings.

52 Against that background, the fact that HR is originally from the Member State in question and that, on that basis, the child shares the culture of that State — as shown by, inter alia, the language in which she mainly expresses herself and the fact that she was christened there — and maintains relationships with the members of her family who are resident in that State is also not decisive.

53 It is true that, as HR and the Polish Government have emphasised in their observations, the Court ruled, in its judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraph 55), that the geographic and family origins of the parent who has custody of the child

may become relevant for determining the integration of that parent and, by extension, the integration of the child, into a given social and family environment.

54 However, as has been recalled in paragraph 41 above, determining the child's place of habitual residence for the purpose of Article 8(1) of Regulation No 2201/2003 requires a global analysis of the particular circumstances of each individual case. Therefore, the guidance provided in the context of one case may be transposed to another case only with caution.

55 In that regard, in the case giving rise to the judgment of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829), Ms Mercredi had left the United Kingdom, where she had previously been resident with her child, for the island of Réunion (France), although the child was only two months old. At the time that relocation took place, Ms Mercredi had sole custody of the child for the purpose of Article 2(9) of Regulation No 2201/2003. In so far as, at the time the action was brought in that case, the mother and daughter had been staying only a few days on the island in question, it was necessary to determine whether the child's place of habitual residence for the purpose of that regulation was still the United Kingdom, or whether, in view of such a geographical relocation, it had moved to France. In that context, the fact that Ms Mercredi was originally from that island, that her family were still living there, and that she spoke French were indicators demonstrating her permanent relocation and, thus, that her daughter's place of habitual residence had moved.

56 By contrast, in a case such as that in the main proceedings, the geographical origins of the parent who actually has custody of the child and the relationships which that child maintains with his or her family in the Member State concerned cannot obscure, for the purposes of determining the place which is the centre of the child's life, the objective circumstances indicating that it was permanently staying with that parent in another Member State at the time the application concerning parental responsibility was submitted.

57 In addition, regarding a child's cultural ties with its parents' Member State of origin, it is true that they may point to a certain degree of closeness between that child and the Member State in question, corresponding, in essence, to a bond of nationality. The child's linguistic knowledge and nationality may also, where appropriate, be an indicator of its place of habitual residence (see, to that effect, judgment of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraph 39).

58 However, in Regulation No 2201/2003, the EU legislature has given only limited attention to such considerations in matters of parental responsibility. In particular, under that regulation, the jurisdiction of the courts of the Member State of which the child is a national may not take precedence over that of the courts of its Member State of habitual residence, except in the limited circumstances and conditions listed in Articles 12 and 15 of that regulation.

59 That choice proceeds from a particular view of the best interests of the child. The EU legislature considers that the courts geographically closest to the child's place of habitual residence are generally the best placed to assess the measures to be taken in the interests of that child (see, to that effect, judgments of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 36; of 15 July 2010, *Purrucker*, C-256/09, EU:C:2010:437, paragraph 91; and of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraphs 51 and 52).

60 Therefore, when interpreting the concept of the child's place of 'habitual residence' for the purpose of Article 8(1) of Regulation No 2201/2003, the child's cultural ties or its nationality cannot be given greater weight at the expense of objective geographical considerations without disregarding the EU legislature's intention.

61 Lastly, the fact that the parent who, in practice, has custody of the child has, as the case may be, the intention of returning to live with that child in that parent's Member State of origin cannot be decisive in a case such as that in the main proceedings.

62 It is true that, as has been recalled in paragraph 46 above, the intention of the parents may constitute a relevant factor for determining the place where the child has its habitual residence.

63 However, first, the fact that a child is, in practice, in the custody of one of its parents does not mean that parental intention can in all cases be summarised as being the wish of that parent alone. Indeed, so long as both parents are entitled to custody of the child for the purpose of Article 2(9) of Regulation No 2201/2003 and intend to exercise that right, the wishes of each parent must be taken into account.

64 Second and in any event, as the determination of the child's place of habitual residence for the purpose of Regulation No 2201/2003 is essentially based on objective circumstances, the intention of the parents is not, in principle, decisive in itself in that regard. It is merely, where appropriate, an indicator capable of complementing a body of other consistent evidence (see, to that effect, judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraphs 47 and 51).

65 Accordingly, the wish of the parent who, in practice, has custody of the child to settle with that child in that parent's Member State of origin in the future, whether established or not, cannot, in itself, establish that the child's place of habitual residence is in that Member State. As is argued by the Czech Government, in circumstances such as those at issue in the main proceedings, the issue of where the child had its place of habitual residence at the time the application concerning parental responsibility over that child was submitted cannot be confused with the issue of the possibility that that place of habitual residence might move to another Member State in the future. Therefore, the fact that, at that time, that parent wished to settle in his or her Member State of origin in the future does not permit the conclusion that the child was already resident there.

66 In the light of all of the foregoing, the answer to the questions referred is that Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that a child's place of habitual residence for the purpose of that regulation is the place which, in practice, is the centre of that child's life. It is for the national court to determine, on the basis of a consistent body of evidence, where that centre was located at the time the application concerning parental responsibility over the child was submitted. In that regard, in a case such as that in the main proceedings, having regard to the facts established by that court, the following, taken together, are decisive factors:

- the fact that, from its birth until its parents' separation, the child generally lived with those parents in a specific place;
- the fact that the parent who, in practice, has had custody of the child since the couple's separation continues to stay in that place with the child on a daily basis and is employed there under an employment contract of indefinite duration; and
- the fact that the child has regular contact there with its other parent, who is still resident in that place.

By contrast, in a case such as that in the main proceedings, the following cannot be regarded as decisive:

- the stays which the parent who, in practice, has custody of the child has spent in the past with that child in the territory of that parent’s Member State of origin in the context of leave periods or holidays;
- the origins of the parent in question, the cultural ties which the child has with that Member State as a result, and the parent’s relationships with family residing in that Member State; and
- any intention the parent has of settling in that Member State with the child in the future.

Costs

67 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 (Fifth Chamber) hereby rules:

Article 8(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, must be interpreted as meaning that a child’s place of habitual residence for the purpose of that regulation is the place which, in practice, is the centre of that child’s life. It is for the national court to determine, on the basis of a consistent body of evidence, where that centre was located at the time the application concerning parental responsibility over the child was submitted. In that regard, in a case such as that in the main proceedings, having regard to the facts established by that court, the following, taken together, are decisive factors:

- **the fact that, from its birth until its parents’ separation, the child generally lived with those parents in a specific place;**
- **the fact that the parent who, in practice, has had custody of the child since the couple’s separation continues to stay in that place with the child on a daily basis and is employed there under an employment contract of indefinite duration; and**
- **the fact that the child has regular contact there with its other parent, who is still resident in that place.**

By contrast, in a case such as that in the main proceedings, the following cannot be regarded as decisive:

- **the stays which the parent who, in practice, has custody of the child has spent in the past with that child in the territory of that parent’s Member State of origin in the context of leave periods or holidays;**
- **the origins of the parent in question, the cultural ties which the child has with that Member State as a result, and the parent’s relationships with family residing in that Member State; and**
- **any intention the parent has of settling in that Member State with the child in the future.**

[Signatures]

* Language of the case: Polish.
