



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 114/09**  
Luxembourg, 23 December 2009

Judgment in Case C-403/09 PPU  
Jasna Detiček v Maurizio Sgueglia

**A court of a Member State in which a child is present cannot provisionally grant custody of the child to one parent if a court of another Member State, which has jurisdiction as to the substance of the case, has already given custody to the other parent**

*To accept that there was a situation of urgency in such a case would run counter to the principle of mutual recognition of judgments given in the Member States and to the legislature's aim of deterring the wrongful removal or retention of children between Member States*

The Community regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility<sup>1</sup> provides that a court of a Member State may, in those matters and in urgent cases, take provisional or protective measures in respect of persons or assets in that State, even if a court of another Member State has jurisdiction as to the substance of the case.

Ms Detiček, of Slovene nationality, and Mr Sgueglia, of Italian nationality, a married couple in the course of divorce proceedings, lived in Italy for 25 years. On 25 July 2007 the competent court in Tivoli (Italy), before which they had brought divorce proceedings which also related to custody of their daughter Antonella, born in 1997, provisionally granted sole custody of Antonella to Mr Sgueglia and ordered her to be placed provisionally in a children's home in Rome. On the same day Ms Detiček left Italy with her daughter to travel to Slovenia, where they are still living today.

By a judgment of the Slovenian court, the order of the Tribunale di Tivoli was declared enforceable in the territory of the Republic of Slovenia. On the basis of that judgment, the enforcement procedure for the child's return to her father, with placement in the children's home, was started.

Subsequently, relying on a change in circumstances and on the interests of the child, the Slovenian court, on application by Ms Detiček, granted her provisional custody of Antonella. The court found that Antonella had settled into her social environment in Slovenia. Return to Italy and enforced placement in a children's home would be contrary to her welfare, as it would cause her irreversible physical and psychological trauma. In addition, during the judicial proceedings in Slovenia, Antonella had expressed the wish to remain with her mother.

The Višje sodišče v Mariboru (Court of Appeal, Maribor), to which Mr Sgueglia appealed, asked the Court of Justice whether a court of the Member State in whose territory the child is present can take a provisional measure giving custody of a child to one parent, where a court of another Member State has already delivered a judgment provisionally granting custody of the child to the other parent, and that judgment has been declared enforceable in the former Member State.

The Court starts by pointing out that the courts of a Member State in which the child is present are entitled to take the provisional or protective measures available under the law of that State only on condition that three cumulative conditions are satisfied: the measures concerned must be urgent, they must be taken in respect of persons or assets in the Member State where those courts are

<sup>1</sup> 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).

situated, and they must be provisional. Failure to comply with any one of those three conditions therefore has the consequence that the measure contemplated cannot fall within an exception to the system of jurisdiction laid down by EU law.

The concept of urgency in the relevant provision<sup>2</sup> of the regulation relates both to the situation of the child and to the impossibility in practice of bringing the application concerning parental responsibility before the court with jurisdiction as to the substance of the case.

The Court observes that the circumstances of the present case do not allow the conclusion that there is such a case of urgency.

First, to acknowledge that there is a situation of urgency in a case such as the present one would run counter to the principle of mutual recognition of judgments given in the Member States, a principle which is itself based on the principle of mutual trust between Member States. If a change of circumstances resulting from a gradual process, such as the child's integration into a new environment, were enough to entitle a court not having jurisdiction as to the substance to take a provisional measure amending the measure in matters of parental responsibility taken by the court with jurisdiction as to the substance, any delay in the enforcement procedure in the requested Member State would contribute to creating the conditions that would allow the former court to block the enforcement of the judgment that had been declared enforceable. Such an interpretation would undermine the very principles on which the regulation is based.

Second, in the present case the change in the child's situation results from a wrongful removal within the meaning of the regulation. The recognition of a situation of urgency in such a case would run counter to the legislature's aim of deterring the wrongful removal or retention of children between Member States. To accept that a measure involving a change of parental responsibility could be taken would amount, by consolidating a factual situation deriving from wrongful conduct, to strengthening the position of the parent responsible for the wrongful removal.

The Court also observes that provisional measures must be taken in respect of persons in the Member State in which the courts with jurisdiction to take such measures are located. In particular, a provisional measure in matters of parental responsibility ordering a change of custody of a child is taken not only in respect of the child but also in respect of the parent to whom custody of the child is now granted and of the other parent who loses custody following the adoption of the measure. In the present case, it is not disputed that the father resides in another Member State, and there is nothing to suggest that he is in the Member State whose court is claiming jurisdiction.

The Court notes, finally, that one of the fundamental rights of the child is the right, set out in the Charter of Fundamental Rights of the European Union, to maintain a personal relationship and direct contact, on a regular basis, with both parents, and respect for that right is undeniably in the best interests of any child. The Court observes that the wrongful removal of a child, following a decision taken unilaterally by one parent, will more often than not deprive the child of the possibility of maintaining a personal relationship and direct contact on a regular basis with the other parent. The Court considers that a measure which prevents the maintenance on a regular basis of a personal relationship and direct contact with both parents can be justified only by another interest of the child that is so important that it takes priority over the interest underlying that fundamental right. **However, a balanced and reasonable assessment of all the interests involved, which must be based on objective considerations relating to the actual person of the child and his or her social environment, must in principle be carried out in proceedings before the court which has jurisdiction as to the substance of the case.**

The Court concludes that **the law of the Union does not allow a court of a Member State to take a provisional measure in matters of parental responsibility granting custody of a child who is in the territory of that Member State to one parent, where a court of another Member State, which has jurisdiction as to the substance of the dispute relating to custody of the child, has**

---

<sup>2</sup> Article 20(1).

**already delivered a judgment provisionally giving custody of the child to the other parent, and that judgment has been declared enforceable in the former Member State.**

---

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106