



Press and Information

Court of Justice of the European Union

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Judgment in Case C-211/10 PPU
Doris Povse v Mauro Alpagó

The Court clarifies certain rules concerning the recognition and enforcement of judgments requiring the return of a child who has been wrongfully removed

The enforcement of a certified judgment which requires the return of the child may not be refused either on account of a judgment delivered subsequently by a court of the Member State of enforcement or on account of a change of circumstances after its delivery

The regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility¹ provides that, in case of wrongful removal of a child, the courts of the Member State where that child was habitually resident immediately before the removal are to have jurisdiction. However, that jurisdiction may be transferred to a court of another Member State in specific cases, and in particular when the child has resided in that other Member State for a period of at least one year, is settled in his or her new environment and a judgment on custody that does not entail his or her return has been issued by the court which originally had jurisdiction.

According to the Regulation, a judgment which requires the return of the child that is issued by a court having jurisdiction is enforceable. The Regulation also lays down a procedure for the certification of such judgments.

Doris Povse and Mauro Alpagó, an unmarried couple, lived together until the end of January 2008 with their daughter Sofia, who was born in Italy in December 2006. Notwithstanding the fact that, by an interim judgment issued as a matter of urgency on 8 February 2008 on the application of the father, the Tribunale per i Minorenni di Venezia (Venice Court for matters concerning minors, Italy) prohibited the mother (who had since left the shared home) from leaving the country with the child, Ms Povse and her daughter went to Austria in February 2008, where they have lived ever since.

On 23 May 2008, the Tribunale per i Minorenni di Venezia made an order provisionally awarding custody to both parents, but stating that the child could reside in Austria with her mother pending delivery of the court's final judgment. By the same interim order, the Italian court ordered that the father was required to contribute to the child's living costs, laid down rules for access by the father and ordered that an expert's report be obtained from a social worker in order to assess the relationship between the little girl and the two parents. Notwithstanding that order, the social worker stated in a report that the task could not be completed or conducted in the child's interest because the mother had allowed the father only minimal and insufficient access.

In November 2008, the Bezirksgericht Leoben (District Court, Leoben, Austria) dismissed an application lodged by Mr Alpagó in April 2008 for Sofia to be returned to Italy, on the ground of the Italian court's decision that she could provisionally remain with her mother.

Following Ms Povse's application of 26 May 2009 for custody of the child, the Bezirksgericht Judenburg (District Court, Judenburg, Austria), in whose jurisdiction she was living with her daughter, accepted jurisdiction and asked the Tribunale per i Minorenni di Venezia to decline its own jurisdiction.

¹ 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).

However, Mr Alpago had already applied to the Italian court on 9 April 2009, in the context of the pending custody proceedings, for an order requiring that the child be returned to Italy. At a hearing arranged by that court on 19 May 2009, Ms Povse stated that she was in a position to adhere to the schedule of father-daughter meetings drawn up by the social worker. She did not, during this hearing, disclose the the action she had taken before the Bezirksgericht Judenburg.

On 10 July 2009, the Tribunale per i Minorenni di Venezia asserted its own jurisdiction since, in its view, the requirements for a transfer of jurisdiction were not met, and stated that the social worker's report that it had commissioned had not been able to be completed because the mother had not adhered to the access schedule drawn up by the social worker. Moreover, it ordered the immediate return of the child to Italy in order to restore contact between Sofia and her father, which had been disrupted as a result of the attitude of the mother. That judgment was certified in accordance with the Regulation.

On 25 August 2009, the Bezirksgericht Judenburg made an interim order, provisionally awarding custody of Sofia to Ms Povse.

On 22 September 2009, Mr Alpago applied to the Austrian courts for enforcement of the judgment requiring Sofia to be returned to Italy. The case came before the Oberster Gerichtshof (Austrian Supreme Court) which, having certain doubts about the interpretation of the Regulation, referred a number of questions to the Court of Justice.

As a preliminary point, the Court notes that the main proceedings concern the wrongful removal of a child and that, according to the Regulation, the court having jurisdiction, at least at the time of the child's abduction, was the Tribunale per i Minorenni di Venezia, the court for the place where the child was habitually resident before her wrongful removal.

The Court observes that the system established by the Regulation is based on the central role given to the court which has jurisdiction, and that the recognition and enforcement of judgments given in a Member State must be based on the principle of mutual trust, and the grounds for non-recognition kept to the minimum required. Furthermore, it states that the Regulation seeks to deter child abductions between Member States and, in cases of abduction, to obtain the child's return without delay. It follows that the wrongful abduction of a child should not, as a rule, result in a transfer of jurisdiction from the courts of the Member State where the child was habitually resident immediately before his or her removal to the courts of the Member State to which the child has been taken.

In that context, the Court finds that **only a final judgment** made on the basis of a full examination of all the relevant information and by which the court having jurisdiction rules on the child's custody arrangements which are not subject to further administrative or judicial decisions **may result in the transfer of jurisdiction to another court**. If an interim judgment were to result in the loss of jurisdiction on the question of custody of the child, the court having jurisdiction in the Member State of earlier habitual residence might be deterred from issuing such an interim judgment notwithstanding the fact that the interests of the child demanded it. The Court adds that the decision of the Tribunale per i Minorenni di Venezia of 23 May 2008 provisionally awarding custody to both parents does not in any way constitute final judgment on rights of custody.

Next, the Court finds that **a judgment of the court having jurisdiction which is certified in accordance with the Regulation, and which requires the return of the child, is enforceable, even if it is not preceded by a final judgment on rights of custody of the child**. The Court observes that, so as not to delay the return of a child who has been wrongfully removed, such a judgment enjoys procedural autonomy.

The Court adds that consideration of the situation in this case also shows that approach to be the correct one. The judgment of the Italian court requiring the return of the child is underpinned by the consideration that the child's relationship with her father has been disrupted. Consequently, it is in the child's best interests for that relationship to be re-established and also, if possible, for her mother's presence in Italy to be assured, so that the child's relationship with both parents, and their

parental abilities and their personalities may be examined in depth by the competent Italian services before final judgment on custody and parental responsibility is given.

Lastly, the Court finds that **the enforcement of a certified judgment which requires the return of the child may not be refused on account of a judgment delivered subsequently by a court of the Member State of enforcement. Furthermore, this enforcement can also not be refused on the grounds that it would constitute a serious risk to the best interests of the child on account of a change of circumstances after its delivery.** The Court observes that the Regulation lays down a clear division of powers between the courts of the Member State of origin and of the Member State of enforcement in order to ensure the rapid return of the child. The court before which enforcement is sought can determine only the enforceability of the judgment. Questions concerning the substance of the judgment and any change of circumstances may be raised only before the competent court of the Member State of origin.

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 European Union law or the validity of a European Union 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 a similar issue is raised.

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

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