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Press and Information

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Judgment of the Court of Justice in Case C-195/08 PPU

Rinau

THE FIRST URGENT PRELIMINARY RULING PROCEDURE REQUIRES THE COURT TO CLARIFY COMMUNITY RULES RELATING TO THE RETURN OF A CHILD WRONGFULLY RETAINED IN ANOTHER MEMBER STATE

Once a decision refusing the return of a child has been taken and brought to the attention of the court of origin, its replacement by a decision of return does not prevent the court of origin from certifying the enforceability of its own decision ordering the return of the child.

The urgent preliminary ruling procedure, which has been applied for the first time in this case, was established with effect from 1 March 2008 in order to enable the Court to deal much more quickly with issues relating to the area of freedom, security and justice¹. Such an issue may arise, for example, in proceedings concerning parental responsibility if the jurisdiction under Community law of the national court hearing the case depends on the answer to the question referred for a preliminary ruling.

That is precisely the situation in which the Supreme Court of Lithuania currently finds itself. An application has been made to that court for non-recognition in Lithuania of a judgment delivered by a German court which has awarded custody of a child to the father, who is resident in Germany, and ordered the mother, who is resident in Lithuania, to return the child to the father.

Mrs Inga Rinau, a Lithuanian national, married Michael Rinau, a German national, in 2003. The spouses lived in Germany. Two months after the birth of their daughter Luisa in 2005, they separated, their daughter Luisa continuing to live with Mrs Rinau. Divorce proceedings were subsequently initiated. In July 2006, after obtaining the consent of her husband to go abroad on holiday for two weeks with her daughter, Mrs Rinau left Germany with Luisa to travel to Lithuania, where she has remained and lived ever since.

In August 2006, the Amtsgericht Oranienburg (Oranienburg local court) (Germany) provisionally awarded custody of Luisa to her father. In December 2006, the Klaipėda regional court (Lithuania) dismissed an application by Mr Rinau for the return of his daughter to Germany.

¹ See Press Release 12/08 (<http://curia.europa.eu/en/actu/communiqués/cp08/info/cp080012en.pdf>)

Since then, a series of decisions have been taken by the German and Lithuanian courts on the issue of Luisa's possible return to Germany.

In Germany, the Amtsgericht Oranienburg pronounced the divorce of the Rinau spouses on 20 June 2007. It awarded custody of Luisa to Mr Rinau. Taking account of the Klaipėda regional court's decision refusing the child's return, the Amtsgericht ordered Mrs Rinau to send her daughter back to Germany and to entrust Mr Rinau with her custody. In particular, the Amtsgericht issued the certificate conferring, under the Community legislation relating to the enforcement of judgments in matters of parental responsibility², enforceability on the decision of return and enabling its automatic recognition in another Member State.

In Lithuania, on the one hand, the initial decision refusing Luisa's return was reversed in March 2007 when the Court of Appeal ordered the child's return to Germany. The enforcement of that decision has in the meantime been suspended.

On the other hand, Mrs Rinau brought an action before the courts seeking the non-recognition of the decision of return taken by the Amtsgericht Oranienburg.

Consequently, the Supreme Court of Lithuania wonders whether, notwithstanding the enforceability of the decision of return, it may examine Mrs Rinau's application on the ground that the Amtsgericht did not follow the procedures provided for by the Community Regulation. The Supreme Court of Lithuania wishes to know in particular whether the Amtsgericht was entitled to certify the enforceability of the decision of return even though, following the reversal of the decision of non-return taken by the Klaipėda regional court, the conditions in which the Regulation provides for the issue of the certificate were no longer fulfilled.

In its judgment of today, the Court observes that the certificate relating to enforceability cannot be issued unless a decision of non-return has been delivered beforehand. In the main proceedings, the reversal by the Court of Appeal of Lithuania of the initial refusal decision does not, however, prevent the Amtsgericht Oranienburg from issuing the certificate.

Procedural incidents which, after a decision of non-return has been given, occur or re-occur in the Member State of enforcement are not decisive and can be regarded as irrelevant for the purposes of implementing the Community regulation in question.

If the position were otherwise, there would be a risk that the Regulation would be deprived of its useful effect, since the objective of the immediate return of the child would remain subject to the condition that the redress procedures allowed under the domestic law of the Member State in which the child is being wrongfully retained have been exhausted.

The Court holds that, once a decision of non-return has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate conferring enforceability on the decision of that court, that the initial decision of non-return has been suspended, reversed, set aside or, in any event, not become *res judicata* or has been replaced by a decision of return, in so far as the return of the child has not actually taken place. Since no doubt has been expressed as regards the authenticity of that certificate and since it has been drawn up in accordance with the provisions of the Regulation, opposition to the recognition of the decision

² Council Regulation (EC) No 2201/2003 ('the Brussels IIa Regulation') of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (OJ L 338, 23.12.2003, p. 1)

of return is not permitted and it is for the court hearing the case only to declare the enforceability of the certified decision and to allow the immediate return of the child.

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Languages available: DE EN FR IT LT

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-195/08>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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